

K. England & Common Pleas
Coushops *15. 2. c.*

R E P O R T S

A N D

CASES of PRACTICE

I N

The Court of Common Pleas,

In the Reigns of

Queen ANNE, King GEORGE I. and
King GEORGE II.

By a late Eminent Hand.
— Sir George Cooke

With Two TABLES; one of the Names of
the Cases, the other of the Principal Matters.

The Second Edition, with Additional
References, &c.

In the SAVOY:

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the Ship, in Fleet-street. MDCCLXVII.



To the Right Honourable

Sir *JOHN WILLES*, Kt.

Lord Chief Justice of his Majesty's
Court of Common Pleas,

A N D

The Honourable the J U S T I C E S
of the same Court,

THIS Collection of *CASES* of
PRACTICE is humbly dedicated,
by their Lordships

Most Obedient, and

Most Humble Servants,

The EDITORS.

3

A

T A B L E

O F T H E

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REPORTS

R E P O R T S

A N D

CASES of PRACTICE

In the C O U R T of

COMMON PLEAS.

* Copley *versus* Delanoy. *Easter*
5 Anne, 1706.

* Page 1

IN this Cause, the Plaintiff having proceeded to execute a Writ of Scire facias Inquiry, without giving Notice of the Time of executing the same, a Motion was made to set aside the Execution thereof; and several Practicers having been consulted concerning the Practice in this Particular, it appeared that Notice was usually given, and yet that it had been ruled good without. But the Court thinking it reasonable, that the Party should in

Notice to be given of executing a Sci^o fac^o Inquiry.
Strangerways v. Ascough, post. Mich. 4 Geo. I.

B all

Cases of Practice in the

Mich. 6 Ann. all Cases have an Opportunity of seeing that he had Justice done him, in respect to the Measure of Damages, or other Matter to be inquired of, declared that for the future Notice should always be given; and the Defendant, on paying Costs, had Leave to plead to the Writ.

* Page 2 * *Rawlins versus Parry, un' Attorn',*
Ec. Mich. 6 Ann. 1707.

Privilege.

Midd. ff. **U**PON a Motion against the Sheriff, for not allowing a Writ of Privilege for the Discharge of the Defendant, who was taken into Custody on a King's Bench Process; a Precedent was cited of a Writ of Privilege, directed to the Justices of the King's Bench.

2 Salk. 545.
Farresley 106.
But vide post.
Higginson v.
Umfrevil,
Trin. 2 Geo. II.

The Court said, That that Writ might have issued sub silentio, but it was laid down as Law and Practice, that where a privileged Person is arrested on Process out of a superior Court, he may plead his Privilege (viz. he must sue out his Writ and produce it with his Plea) sub pede sigilli; but if on Process out of an inferior Court, his Writ ought to be allowed Instante.

Court of Common Pleas.

Mich. 8 Ann.

Bower *versus* Street. *Mich. 8 Ann.*

1709.

IN this Cause, the Practice, as to giving Notice of Trial, came in Question, and was settled by the Court, viz. That the Plaintiff and Defendant should give a Term's Notice of Trial, in all Cases where the Issue has been joined above a Year; but if there have been any intermediate Proceedings, as Notice of Trial, or the like, there only common Notice is necessary; vide Bux-
som & Pellow, post. Mich. 5 Geo. II. where the Practice was likewise settled, that where a Term's Notice is requisite, such Notice must be given before the *Essoin-Day*.

Notice of Trial.

Regula Mich.
1654. sec. 21.

Post. *Trin.*
1712.

Deighton v.
Dalton, Mic.
5 Geo. I.

Smithsend *versus* Long. *Trin.* 10
Ann. 1711. *Rot.* 1062.

AN Action of Trespas tried at Gloucester at the Summer Assizes, and Damages under 40 s. The Declaration suggested several Trespasles, and among others, for * turning up the Soil with Plows, &c. upon which the Question now was, Whether the Prothonotary should give any Increase of Costs?
B 2

Costs de incremento in Trespas.

* Page 3

Cases of Practice in the

Hil. 10 Ann. Costs? And Counsel being heard on both Sides, and several Precedents cited, the Court were divided in Opinion, but at last held that no Costs de incremento should be taxed.
Post. Beck v. Nicholls, Trin. 1723.

Note; If it had appeared upon the Trial to have been a voluntary Trespass, or if the Title of the Land had come in Question, the Judge would have certified.

And in a Cause between *Hazeltine* versus *Kirkhouse*, *East. 2 Geo. II. Foley*, the same Point came again in Question, when the Court held according to the above Resolution.

Thornhill versus Lomax. Hil. 10 Ann. 1711.

Borret.

Amendment
of a Roll in
the Treasury
by the Record
and Postea.

ON a Motion to amend a Roll, remaining in the Treasury, whereon by Accident some Ink had fallen; the Clerk of the Treasury and Under-Clerks, and Mr. Holmes the Treasury-keeper, were examined; and it appearing to be a mere Accident, the Court ordered the Roll in the Treasury to be amended by the *Nisi prius* Roll and Postea.

Anonymus.

Court of Common Pleas.

Anonymus. *East. 11 Ann. 1712.*

East. 11 Ann.

IT was declared by the Court, upon a Motion, that all Notices of Trial, and of Inquiries, and Countermands of Notices, ought to be in Writing, and that all verbal Notices were void.

Notices and Countermands to be in Writing.

Anonymus. *Easter 11 Ann.*

UPON a Motion concerning the Regularity of a Bill that had been filed against the Defendant, who was an Attorney of this Court, the Court declared, that all Bills against Attornies should be thrice called * in open Court, then entered with the Prothonotary, and a Rule being given thereon by the Secondary for the Defendant's Appearance, the Bill should be filed in the Prothonotary's Office till the Rule is out, and afterwards filed with the Custos Brevium.

Bills against Attornies.

* Page 4

Trin. 21 Car. II. reg. 2.

Vide the Rule of Court *Trin. 1669*, concerning the entering of Bills against Attornies upon Record, before they ought to be filed. See also the Rule made *Hill. 1737*, by which no Forejudger is to be entered against an Attorney in Actions in *London* or *Middlesex*, and where the Defendant resides within twenty Miles of *London*, till four Days after Notice shall be given in

Hil. 11 Geo. II. reg. 3.

Cases of Practice in the

Trin. 11 Ann. Writing of filing the Bill; and in other Cases not till eight Days after such Notice.

Anonymus. *Trin. 11 Ann. 1712.*

Notice of
Trial and In-
quiry.

Reg. Cur.

Mich. 1654.

sec. 21.

Ante 2.

Post. Buxsom

v. Pellow,

Mich. 1731.

UPON a Motion in Relation to the due Execution of a Writ of Inquiry of Damages, the Court held, that after an Interlocutory Judgment signed, the Plaintiff need only give common Notice of the Execution of a Writ of Inquiry, notwithstanding the Judgment was signed above a Year before; though upon an Issue that hath been joined above a Year, a Term's Notice of Trial must be given.

Post. Paul v.
Gleedbill.

Vide the Case of *Paul v. Gleedbill*, *Hil. 7 Geo. II.* where it is held, that a Term's Notice must be given, as well of the Execution of Writs of Inquiry, as in all other Cases of Notices, where there has not been any Proceeding within the Year.

Anonymus. *Trin. 11 Ann.*

Costs for De-
fendant after
Demurrer in
Quare Impe-
dit.

IN *Quare Impedit*, where Indgment is given for the Defendant upon a Demurrer, the Defendant shall have Costs, per totam Curiam.

Post. Miller v. Segrave, Hil. 1723. Aplin v. Constable, Trin. 1727.

Anonymus.

Court of Common Pleas.

* Anonymus. *Trin. 11 Ann.*

Trin. 11 Ann.



* Page 5

IT was declared by the Court, that all Precipes for the Passing of Recoveries should be marked with the proper Prothonotary's Name; and at the Time of passing the same should be delivered into Court by one of the Serjeants, otherwise no Recovery to be entered.

Precipes for Recoveries.

Reg. Cur'

Mich. 1677.

Trin. 1736.

Anonymus. *Trin. 11 Ann.*

AN Habeas Corpus brought by the Plaintiff, a Declaration delivered, and Judgment signed; but all was set aside as Irregular, because the Plaintiff having once made his Election cannot remove his own Cause, nor can the Defendant be compelled to appear.

Habeas Corpus
brought by
the Plaintiff.

The like Rule was made *Trin. 10 Ann.*
Hobbs v. Williams.

Anonymus. *Mich. 11 Ann. 1712.*

IN an Action against an Executor, he paid Money into Court, upon the
B 4 Common

Money in
Court, and
Plaintiff non-
sued.

Lane and others against Wilkinson, Trin. 13 Geo. I. But vide Rathbone v. Stedman, Trin. 2 & 3 Geo. II. and Maddox v. Paston, East. 8 Geo. II. where the Defendant shall have the Money in Part of his Costs.

Cases of Practice in the

Mich. 11 Ann.

Common Rule; and on the Trial the Plaintiff being nonsuited, the Executor moved that he might have the Money out of Court; and granted; because he being Executor was unacquainted with the Affairs of his Testator, and might not know whether the Testator owed the Plaintiff any Money or not. But where the Defendant is neither Executor nor Administrator, altho' the Plaintiff be nonsuited, or a Verdict for the Defendant, the Plaintiff shall have the Money out of Court, because the Defendant brings it in as knowing, and being Conscious that he owes the Plaintiff so much.

* Page 6

* Anonymus. *Mich. 11 Ann.*

Copies of Entries, &c. good Evidence.

Post. Lock v.

Hyet, Mich.

7 Geo. I.

granted to produce *Parish*

Books.

Knight v.

Wotton, Hil.

11 Geo. I.

Davis v. Edwards, Hil. 5

Geo. II.,

THE Court was moved for a Rule upon an Officer to attend the Trial with Muster-Rolls, Books, &c. but denied by the whole Court, because such Officer is not subject to the Rule of the Court.

Note; Copies of Muster-Rolls, Entries of Custom-house Officers, and all Copies from Entries where the Court has no Jurisdiction, are generally admitted as Evidence, because the Originals cannot be had.

Methwin

Court of Common Pleas.

Mich. 11 Ann.

Methwin versus Pople. Mich. 11 Ann.

Borret.

IT was held in this Cause, that the Defendant's Attorney is bound to receive Declarations by the By, after a Declaration delivered in the Action on which the Defendant was arrested, but is not bound to receive a Declaration at the Suit of any other Person.

Declaring by
the By.

*Post. Holmes
v. Small, Mich.
4 Geo. II.*

*Seyliard versus Calsburne. Hil. 11
Ann. 1712.*

Judgment by Confession entered after the Defendant's Death, but set aside upon Motion; because the Defendant's Death was a Revocation of his Authority, and for that the Defendant could not have an Opportunity of controverting the Validity of the Warrant of Attorney to confess Judgment.

Judgment by
Confession set
aside because
signed after
Defendant's
Death.

*Rogers v.
Bretton, Hil.
3 Geo. I. e-
contra.*

Anonymus. Hil. 11 Ann.

A Motion was made to stay Proceedings upon an Ejectment for Non-payment of Rent reserved on a Lease; which was granted accordingly,

Ejectment
stayed on Pay-
ment of Rent
and Costs.

*See Stat. 11
Geo. II. c. 17.*

Cases of Practice in the

Hil. 11 Ann. upon paying the Lessor of the Plaintiff his Rent in Arrear and Costs.

* Page 7 * *Stores versus Tong. Hil. 11 Ann. Borret.*

Costs added upon a Postea.

IN an Action upon the Case, the Jury upon the Trial having found Damages, but refusing to find any Costs, it was moved that Costs be added, because the Jury are *ex officio* bound to give Costs, and the Court will supply this Defect; and ordered accordingly.

Valentine versus Dennis. Mich. 12 Ann. 1713.

Cooke.

No Bail to Writ of Error on a Bail-Bond, tho' it did not appear in the Declaration, that the Action was brought on a Bail-Bond.
Post. Jackson v. Duckett, Hil. 1726.

JUDGMENT on a Bail-Bond, but no Mention in the Declaration that it was on such a Bond; upon a Writ of Error brought the Plaintiff insisted on Bail, alledging, that the Court were not to examine into the Condition of the Bond on which the Action was brought: But on the Clerk of the Error's reporting to the Court, that the constant Practice was to examine whether the Bond was given for Payment of Money or not; and upon Examination, finding it was a Bail-Bond, it was held by the whole Court, that no Bail should be given on that Writ of Error.

Thornby

Court of Common Pleas.

Hil. 12 Ann.

Thornby, *on the Demise of the Duke
and Duchess of Hamilton, against
Fleetwood.* Hil. 12 Ann. 1713.

Foley.

IN Ejectment, a Special Verdict was found on a Trial at Bar, and thereupon Judgment for the Defendant, and Costs taxed; and after Affidavit of the Demand of the Costs, a Motion was made for an Attachment against the Duchess (the Duke being dead) she being one of the Lessors, for Non-payment of the Costs; and it was alleged, that if the Court did not grant it, the Defendant would be Remediless; for tho' in other Cases a Distringas * issues against Peers, yet in this Case no Process can go but an Attachment.

An Attachment *quoad* Goods and Chattels against a Peer-ess for Non-payment of Costs in Ejectment.

* Page 8

But the Court refused to grant an Attachment against the Person of the Duchess, but ordered her to shew Cause why an Attachment as to her Goods and Chattels should not be issued, which Rule was afterwards made absolute.

Symonds *against* The Mayor, &c. of
Totness. Hil. 12 Ann.

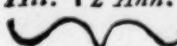
Cooke.

A Motion to set aside an Effoin cast in this Cause; upon Debate, and hearing

Effoin in what Case allowed.
1 Rol. Ab. 818.
21 Ed. IV.

79. b. Fleta 312. Booth of Real Actions, 14. Peter v. Reginer, Mich.
11 Geo. II. Cooke. An Effoin discharged because it was a Personal Action.

Cases of Practice in the

Hil. 12 Ann.  hearing Counsel on both Sides, the Question was, Whether an Effoin lay or not? The Court was unanimously of Opinion, that a Corporation aggregate were not intitled to an Effoin in a Personal Action. And it was said no Effoin lies in any Personal Action whatsoever, not even where a Peer or Member of Parliament is Party.

Anonymus. *Hil. 12 Ann.*

An Heir obliged to appear to a *Clausum fregit*, and may be arrested thereon.

A Motion to stay Proceedings against an Heir, the Defendant alleging, that an Heir ought to be proceeded against by way of Summons, and could not be arrested upon a *Clausum fregit*; the Three Prothonotaries declared, that formerly there was no other way of proceeding against an Heir but by Summons, &c. but of late Years the Practice had been otherwise, and that an Heir might be arrested upon a *Clausum fregit*, and so held by the whole Court, and that he need not be named in the Writ as Heir.

Edmonds's Case. *Hil. 12 Ann.*

Foley.

Sheriff's Fee for bringing up Prisoners by *Habeas*

ONE Edmonds brought into Court by the Under-Sheriff of Herefordshire

Corpus. Post. King's Case, Hil. 1736. Cope's Case, Mich. 1734.

Court of Common Pleas.

shire upon a Habeas Corpus, the Distance being 130 Post Miles from London; by the Course of the Court the Under-Sheriff could have but 6l. 10s. being 1s. per Mile; but upon his Affidavit that Edmonds was a dangerous Man, and that he had Notice thereof from several Persons who had Actions depending against him, and therefore was forced to have a Guard of four Men, the Court, * on Motion, ordered the Under-Sheriff to be paid 10l. and told Edmonds, that he must either pay the 10l. or be remanded.

Hil. 12 Ann.

* Page 9

Anonymus. *Hil. 12 Ann.*

UPON a Motion for Leave to take out Execution upon a Judgment, whereon a Writ of Error had been brought, and the Record certified, but the Writ of Error quashed; there arose a Question, Whether the Execution should be taken out of the Queen's Bench, to which Court the Record had been removed by the Writ of Error, or out of the Common Pleas; and in Order thereto, whether the Mittitur ought not to be struck out of the Roll: The Court made a Rule for the Defendant to shew Cause the first Day of the next Term, why the Mittitur should not be struck out

The Mittitur ordered to be struck out of the Roll after the Writ of Error quashed.

Cases of Practice in the

Trin. 1 Geo. I. out, and afterwards the Rule was made absolute.

Rayner *versus* Arnold. *Trin. 1 Geo. I.*
1715.

Foley.

Judgment amended.

A Motion to amend a Common Judgment in Debt by Confession, in which there was a Mistake, for it was entered Attach' fuit instead of Sum' fuit; at first the Court made some Difficulty, but afterwards a Rule was made to amend the Record.

Bedford *versus* Cullen, (*Dutton and Wife Vouchees.*) *Hil. 2 Geo. I.* 1715.

Cooke.

Amendment of Writ of Entry.

* Page 10

Post. Laming v. Bestland, Trin. 5 Geo. I. Dean v. Coward, Trin. 10 Geo. I. and Mich. 13 Geo. I. Shepard v. Harris, Hil. 9 Geo. II.

MOTION to amend a Writ of Entry, by putting out Cowickbury, and inserting in Paroch' de Sheering; it appeared that the Deed to lead the Uses thereof was right; * and upon producing several Precedents for Amendment, (among which were the following) a Rule was granted (upon great Deliberation) to amend.

Skinner versus Land, Mich. 6 Car. I. Gulston. A Recovery was agreed to be suffered of Lands in Alphamton and Magna Hermny,

Court of Common Pleas.

Hermny, but suffered of Lands in Al- *Hil. 2 Geo. I.*
phamton and Lamarsh, and ordered to
be amended.

Foster & ux' versus —, 9 W. III. *Cooke.*
A Fine and Recovery agreed to be le-
vied and suffered of the Manor of Ink-
field, but by Mistake the same was
made of the Manor of Inglefield, and
ordered to be amended in all the Places
both of the Fine and Recovery.

Freeman v. Montague & ux', Trin. 4 Jac. II.
and *Smith v. The Earl of Dorset & al'*, Mich.
11 W. III. the like Amendment.

Tregare versus Gennings, East. 23 Car. II.
Wyrley. A Fine levied of Tenements
with the Appurtenances in T. C. in the
Parish of L. in the County of C. in-
stead of in T. C. in the Parish of St. S.
near L. in the County of C. and or-
dered to be amended.

Abney & al' versus Longueville & al', Hil.
5 Ann. *Cooke.* A Fine and Recovery (in
Hil. 35 Car. II.) of Tenements in P. in
the County of Wilts, instead of — in
P. Clarendon and Clarendon Park in the
County of Wilts, and ordered to be a-
mended.

Skinner & al' versus Land, Mich. 6 Car. I.
Gulston. A Recovery suffered (in Hil. 5
Car. I.) of one Acre of Meadow in L.
instead of in H. and ordered to be a-
mended.

Cases of Practice in the

Hil. 2 Geo. I.

*Cooke versus The Ducheſs of Ham-
ilton. Hil. 2 Geo. I. 1716.*

Amendment
of Warrant of
Attorney.

Post. 44. *The
Dutch India
Company v.
Henriques.*

IN Ejectment a Motion to amend a
Warrant of Attorney after a Writ
of Error brought, and granted.

**Page 11*

* Wills and others *against* Turner
and others. *Hil. 2 Geo. I.*

Costs in Pro-
hibition, and
Construction
of the Act 8
§ 9 W. III.
cap. 10.

But vide *Bet-
tenſon v.
Henchman,
Mich. 7 Geo. I.*

IN Prohibition a Motion was made
that the Prothonotary should not al-
low Costs, save from the Time of the
Delivery of the Declaration; and on
hearing Counsel on both Sides, and
reading the Act of the eighth and ninth
of W. 3. the Court unanimously de-
clared, that the Plaintiff ought to have
his Costs from the Time of the Sug-
gestion, and of the Suggestion it self,
and all Costs incident and subsequent
thereto.

Forward versus Beavis. Hil. 2 Geo. I.

Prochein Amy.

IN this Cause it was held, that no
Admission is necessary to sue by Pro-
chein Amy, altho' it has been usually
done.

Rogers

Court of Common Pleas.

Hil. 3 Geo. I.

Rogers *versus* Bretton. Hil. 3 Geo. I.

Borret.

A Motion to set aside a Judgment signed after the Defendant's Death; it appeared the Defendant died before Judgment was signed, but after the first Day of the Term in which it was signed, and therefore upon hearing Counsel on both Sides the Judgment was held good, because all Judgments are such from the first Day of the Term in which they are signed.

Motion to set aside Judgment signed after Defendant's Death. But see ante 6 *Seyliard v. Casburn*, *contra*.

*Atterbury and others *against* Prior.
Trin. 3 Geo. I. 1717.

*Page 12

Foley.

A Motion for Leave to pass Writs of Entry and Seisin in two Recoveries, upon Affidavit and Proof, that the Writs were received by the Custos Brevium, and deposited in the Treasury, but spoiled by the Rain getting in. Upon Sight of the Custos Brevium's Receipt, and reading the Affidavit and Exemplification and Deed to lead the Uses of the Recoveries, the Court made a Rule that the new Writs should pass the Alienation and the

To file and pass new Writs of Entry and Seisin.

Cases of Practice in the

Trin. 3 Geo. I. the several Offices in this Court without Fine or Fee.

Heatley *versus* Pyott and his Wife.

Trin. 3 Geo. I.

Borret.

Motion to set
aside a Fine.

2 *Vent.* 30.
3 *Lev.* 36.
Hil. 36 & 37
Car. II.
Philpot v.
Philpot.
4 *Co.* 121,
122.

A Motion to set aside a Fine upon the Wife's Affidavit, and upon her Examination in open Court, and of the Witnesses to the Deeds, who all declared they never saw the Wife execute the Deeds, and upon Examination of one of the Commissioners upon Oath in open Court, who confessed that the Wife did not acknowledge the Fine, but alledged his Ignorance of the Law; and the other Commissioner absconding; and likewise upon Examination of the Plaintiff and several other Persons, and upon reading many Affidavits, the Court granted an Attachment against Pyott the Husband and Wood one of the Commissioners, being satisfied the Wife never acknowledged the Fine; and after much Debate they ordered the Matter to be tried upon a feigned Issue, upon which a Verdict being found that the Wife did not acknowledge the Fine, it was afterwards by Rule of Court vacated as to the Wife only.

Court of Common Pleas.

Mich. 4 Geo. I.

Steward *versus* Harding. *Mich.*
4 Geo. I. 1717.

A Motion to set aside a Judgment because the Declaration was not left in the Office till just before the Essoin Day of the third Term. On hearing Counsel of both Sides * and upon Report of all the Prothonotaries, the Court were of Opinion, that notwithstanding the Rule of Court seemed to be doubtful, yet where the Defendant does not speed the Plaintiff to declare sooner by giving a Rule for that Purpose at the End of the second Term, the Plaintiff shall have till the Essoin Day of the third Term to deliver or file his Declaration.

What Time
the Plaintiff
has to declare.

* Page 13

Regula Cur'
Mich. 1654.
sec. 14.
Hil. 9 Ann.
reg. 3.

Cork *versus* Baker. *Mich. 4 Geo. I.*

Borret.

A Verdict for the Plaintiff in the Court of Common Pleas, on a Declaration in Case, and a Writ of Error sued out, and thereupon a Certiorari directed to the Custos Brevium to certify an Original int' partes de pli'to transgr'; the Custos Brevium returns no

The Deputy
Custos Brevi-
um committed
by the Court
of King's
Bench, but
afterwards
discharged.

Cases of Practice in the

Mich. 4 Geo. I. Original filed (for tho' a Common (a) Original de pl'ito Transgr' had been left in his Office by the Cursitor amongst the Originals of that Term, yet the Plaintiff had entered a Ne recipiatur before it was left) upon which the Court of King's Bench made a Rule for Mr. Yates, the Deputy Custos Brevium, to attend and shew Cause why an Attachment of Contempt should not be granted against him. Mr. Yates appeared and set forth the whole Matter by Affidavits; the Court of King's Bench notwithstanding committed him to the Custody of the Marshal; after which, Application being made to this Court for a Habeas Corpus, and granted, the Court of King's Bench at the same Time made a Rule to bring him into their Court; but that Court discharged their own Rule, and the Court of Common Pleas granted a second Habeas Corpus; but on the Return Day of the second Habeas Corpus the Court of King's Bench

Vaughan 142.
12 Coke 69.
Roll. 192, 118.
Moor 138,
340. Ro. Rep. 219. Salk. 348. 1 Ven. 236. 1 Ro. Rep. 245. Carter 221, 222. Ha' Corp' Act, 16 Car. II. cap. 10. sec. 8.

(a) Tho' the Want of an Original after a Verdict was aided by the Stat. 18 Eliz. cap. 13. Yet an Original erroneous in Substance, or which warranted not the Declaration was not aided before the Stat. 5 Geo. I. cap. 13. whereby it is enacted, That after a Verdict, no Judgment shall be reversed for any Defect in Form or Substance in any Bill, Writ Original or Judicial, or for any Variance in such Writs from the Declaration or other Proceedings.

made

Court of Common Pleas.

made a Rule to carry him into their Court on a Day after the Return of the second Habeas Corpus; the Marshal brought in the Body on the second Habeas Corpus, and returned the Rule of Commitment, and the Rule made on the Return Day of the second Habeas Corpus. And Mr. Serjeant Cheshire and Pengelly appearing for Mr. Yates, and citing many Cases for his Discharge; the Court remanded him, but ordered him to be brought up on the Monday following, and deferred the Consideration of his Discharge till that Day. Afterwards the Writ of Error was non-pross'd by the Consent of the Plaintiff in Error, and Mr. Yates discharged. *Mich. 4 Geo. I.*

* Strangeways Demandant *versus* As- * Page 14
cough, in Dower. *Mich. 4 Geo. I.*

Cooke.

IN this Cause, the Question was, whether upon the Execution of a Writ of Inquiry of Damages in Dower, Notice of Executing that Inquiry should be given; and upon hearing Counsel on both Sides, the Court were of Opinion that Notice ought to be given, and, for want thereof, set aside the Writ of Inquiry; for upon

Notice to be given of executing a Writ of Inquiry in Dower.

Ante Page 1.

C 3 any

Cases of Practice in the

Mich. 4 Geo. I. any Writ of Inquiry whatsoever, it is
Reg. Cur' very reasonable that the Party should
Mich. 1654. have an Opportunity of defending him-
sec. 21. self in respect to the Measure of Da-
mages.

Feild versus Walford. Mich. 4 Geo. I.

Borret.

No Bail-Bond
to be taken
upon an At-
tachment for
a Contempt.
13 Car. II.
sess. 2. cap. 2.
23 H. 6. c. 10.
Stamford's P.
C. 72. b.
3 Leon. 208.
Dyer 254.
Burton v.
Lane. Stiles.
Lawson
v. Haddick.
2 Ventris 134.
An Attach-
ment is in the
Nature of an
Execution.
Post. Wad-
dington v.
Fitch, Easter
1734.

ON a Demurrer, the Question was,
whether the Sheriff can take a
Bail-Bond upon an Attachment for a
Contempt out of this Court. By the
Act of the 13 Car. II. a Sheriff is not
impowered to take Bail, though the
Court or a Judge may take a Recog-
nizance; it is true Persons taken by
Virtue of Attachments out of Chancery
for not appearing and answering, have
been usually Bailed; and the Reason
is because the Party, upon entering his
Appearance and paying the usual Con-
tempts, is discharged of Course; whereas in this Court the Party is to
appear in Court *de die in diem*, and be
examined on Interrogatories to be ex-
hibited against him; and it is not de-
termined that a Sheriff can take Bail
upon Attachments out of Chancery, but
rather doubted; and in the present Case
all the Judges were of Opinion that no
Bail

Court of Common Pleas.

Bail could be taken, and gave Judg^t Mich. 4 Geo. I.
ment for the Defendant.

Lamley, & ux' Exec' &c. *versus*
Nichols. Mich. 4 Geo. I.

Borret.

IN an Action of the Case on several Promises laid in the Life-Time of the Testator for Meat, Drink, &c. the Plaintiffs were non-pros'd for want of a Replication; and now upon Motion to set aside the Judgment as to the Entry of * Costs which had been taxed upon signing the Non-pros, the Question was, Whether Costs should be allowed or not? The Prothonotaries all agreed that Costs were usually taxed, and the Reason is, because the Plaintiffs themselves had been guilty of a Default; and so likewise on a Non-pros for want of a Declaration, or for want of a Replication to a Plea in Abatement; and the Court held that Costs should be allowed in this Case; but where the Plaintiff, being Executor or Administrator, is nonsuited at the Assizes upon full Evidence, it was doubted whether he should pay Costs.

Costs against an Executor on a Non-pros for want of a Replication.

* Page 15

Post. *Haydon v. Norton*, Mich. 6 Geo. II. on a Discontinuance. Salk. 314. Vide post. *Videon & al' Exec' v. Cooke*, Tri. 6 Geo. I. *Atkins v. Spence*, Mich. 4 Geo. II. where this Doubt is resolved.

Cases of Practice in the

Mich. 5 Geo. I.

Goodright *versus* Thrustout, on the Demise of Jones & ux'. *Mich. 5 Geo. I. 1718.*

Cooke.

Motion to name a better Plaintiff in Ejectment.

A Motion in Ejectment, that the Lessors should name a Plaintiff who should be liable to pay Costs, because the Lessors themselves were very poor; but denied, for the Lessors are in the Nature of Plaintiffs in any other Action, and ought to be on the same Foot as other Plaintiffs are, and therefore this Motion is constantly denied.

Deighton, on the Demise of Goakman and others, *against* Dalton and others. *Mich. 5 Geo. I.*

Cooke.

No Notice or Countermand good on a Sunday.
Reg. Cur. Mich. 1654. sec. 21.

ON a Motion for Costs for not going on to Trial, it appeared that a Countermand was given on Sunday, the Day before the Commission Day, which it was said would have been good, had it not been on a Sunday; but the Court held that Costs should be allowed.

Note;

Court of Common Pleas.

Note ; It has since been held that no Notice of Trial or Inquiry or Countermand of Notice shall be good on a (a) *Sunday*, but the *Sunday* intervening between the Day of Notice and the Commission Day shall be accounted as any other Day.

Hil. 5 Geo. I.

(a) See *Stat. 29 Car. II.*

cap. 7.

Plaintiff to

give two Days

Countermand

of Notice of

Trial.

And *vide* the Rule of Court made *Mich. 3 Geo. I.* by which it is ordered, that no Countermand of Trial at the Assizes shall be good, unless Notice be given two Days before the Commission Day. And *Note* ; The Day of Countermand is held to be one of the Days.

**Anderson versus Moreton & ux.*

*Page 16

Hil. 5 Geo. I. 1718.

Cooke.

ON Motion to set aside a Judgment signed upon a Declaration left in the Office *de bene esse* on a Special Writ in London, no Bail being put in, the Defendant insisted to have four Days to plead after the Expiration of the four Days, exclusive of the Appearance Day of the Return, allowed for putting in Bail; and for the Plaintiff it was alledged, that if he could not compel the Defendant to plead in four Days after the Delivery of the Declaration, it was to no Purpose to sue out

Time of Pleading to Declarations on Special Writs left *de bene esse*.

Vide Reg.

Mich. 3 Geo.

II.

Post. Sellar v.

Faceby, Hil.

1731.

a Spe

Charlton v. Hankey, Mich. 1733. The Practice altered.

Cases of Practice in the

Trin. 5 Geo. I. a Special Writ, because he could not try his Cause within Term, nor would it avail him any Thing filing the Declaration de bene esse. The Court not finding that this Matter had ever been settled, would not make the Defendant an Example, but set aside the Judgment; and ordered that the Costs on both Sides should attend the Event of the Trial.

Hunt *versus* Robinson and others.
Trin. 5 Geo. I. 1719.

Foley.

Treble Costs
to a Commis-
sioner upon a
Nonsuit, by
Virtue of the
Land-Tax
Act.

AN Action was brought against a Commissioner of the Land Tax, upon which the Plaintiff was nonsuited, and the Question was whether the Defendant should have treble Costs; the Judge had not certified; notwithstanding which, the Court made a Rule this Term for treble Costs, and directed a Special Entry on the Roll, viz. Because upon Examination in Court it appeared, that the Defendant was a Commissioner, and in the Execution of his Office as a Commissioner, pursuant to Act of Parliament.

Laming

Court of Common Pleas.

Trin. 5 Geo. I.

* *Laming versus Bestland*, (Jubber and others, Vouchees.) *Trin. 5 Geo. I.*

* Page 17

Borret.

A Motion to amend a Recovery in Hil. 1703. wherein West Egleston and West Tyneham was put in the Writ of Entry instead of Egleston Tyneham; the Deed to lead the Uses was right; Edward Jubber one of the Vouchees was dead, the other Parties alive and consenting, and it appearing that it was the Intent of all the Parties that it should be right, and common Recoveries being common Assurances, Amendments ought more easily to be made than in other Cases; therefore the Court ordered it to be amended accordingly.

Recovery amended.

Ante 9

Post. *Dean & al v. Coward,*

Tri. 10 Geo. I.

& Mich. 13.

See 6 Geo. I.

Jenkinson v.

Staples, Hil.

6 Geo. II.

Shepard v.

Harris, Hil.

9 Geo. II.

Husday versus Boyes. Mich. 6 Geo. I.

Cooke.

IN this Case Bail was put in before a Judge, and excepted against, and other Bail added; the last Bail justified before a Judge without giving Notice to the Plaintiff's Attorney; the first

Additional Bail struck off upon justifying the Bail first put in.

Cases of Practice in the

Mich. 6 Geo. I. first Bail justified in Court, and the Defendant moved to strike off the additional Bail, shewing by Affidavit, that the Additional Bail had voluntarily got himself added in the Bail-piece, on Purpose to have the Defendant in his Power, and surrender her when he thought proper. The Court ordered the Additional Bail to be struck off.

Note ; Dodswell versus Andrews, Mich. 6 Geo. II. Bail was changed upon the like Affidavit and Suggestion.

Buckmaster versus Troughton. Mich. 6 Geo. I.

In what Time
Judgment
may be signed
after calling
for a Plea, &c.

*Page 18

*Post. Broome
v. Woodward,
Mic. 4 Geo. II.*

IN this Cause the Defendant was called upon for a Rejoinder in the Evening, and Judgment was signed the next Morning. It was moved to set aside the Judgment for want of longer Notice. The Court set aside the Judgment on Payment of Costs, because no Time was limited by Rule of the Court, but declared it should be a standing Rule for the * future, that no Judgment should be signed till the opening of the Office the next Day in the Afternoon after proper Demands are made in Writing of the Pleadings for want of which such Judgment shall be signed.

Wright

Court of Common Pleas.

Wright *versus* Dixon. Mich. 6
Geo. I.

Mich. 6 Geo. I.

Foley.

AN Action of Debt upon the Recognizance against Bail; the Defendant was arrested upon a Clausum fregit with an Acetiam in Debito super de- mand'; the Plaintiff thereupon proceeded to Judgment. And now on Motion to set aside these Proceedings, the Question was whether the Plaintiff should not have sued by special Writ; the Court held that an Acetiam in debito is an Action of Debt within the Meaning of the (a) Rule of Court. But that the Defendant, i. e. the Bail, must be Arrested at least four Days before the Return of the Writ or Process, so that he may have Time to render the Principal.

An Action of Debt on the Recognizance may be brought by a Clausum fregit Acetiam in debito. Post. Covert v. Allen, Trin. 9 Geo. I.

(a) Reg. Cur. Mich. 1654. sec. 12.

Bail to be arrested four Days before the Return.

Note; In the Case of *Davis v. Carter & al'*, East. 4 Geo. II. Cooke. Pursuant to this Resolution, Proceedings against Bail were stayed because they were not served with Process till the Day of the Return.

Concerning a Render vide *Vanderefs v. Waylet*, Trin. 1729. and the Case there cited.

Aplin

Cases of Practice in the

Mich. 6 Geo. I.

*Aplin versus Chambers. Mich. 6
Geo. I.*

Foley.

Upon Ap-
pearance to
the *Exigi fa-*
cias the De-
fendant must
plead *instan-*
ter.

IN this Cause the Question was, what Time the Defendant has to plead after Appearance to the *Exigi facias*; the Court held that he must plead *instanter*. And tho' it was objected, that if the Appearance were to an *Exigi facias* returnable the last Return of any Term, the Defendant would have no Opportunity of applying to the Court to bring in Money, change the Venue, or other Matter; but in Answer to that it was said, that the Defendant might, if he had any Reason, apply to a Judge for Relief, but that the Court would not, without manifest Reason, delay the Plaintiff after the Defendant had stood out so many Processes.

**Page 19*

** Griffin versus Ferrers and others.
East. 6 Geo. I. 1720.*

Cooke.

Fine by a
deaf and
Dumb Person.

A Motion that Mr. Benjamin Ferrers, a Deaf and Dumb Person, might be permitted to acknowledge a Fine in open Court, upon an Examination to be taken by Signs on the Fingers, upon the Report on Oath of one Mr. Ralph

Court of Common Pleas.

Ralph Ruffel, who swore he had been used to converse with him in that Manner for seventeen Years and upwards, and that he understood his Meaning perfectly by those Signs: Several Pieces of Ferrers's Painting were produced in Court, viz. Pictures of Queen Anne, Lord Chancellor Parker, and his Own, and all very like the Originals, and agreed to be well Painted and good Pieces.

East. 6 Geo. I.

Keep v. Bull.

Trin. 7 Geo. I.

It appeared likewise he could write his own Name very well and some other Things, yet could read but little Writing, tho' he distinguished several Countries by a Map shewed him in Court, and likewise upon the Oath of Mr. George Turner, who swore he had been acquainted with Ferrers ten Years, and that he had Painted Mr. Burchet's (the Secretary of the Admiralty) Picture, for which he would not take under Five Guineas, and that he believed he understood the Value of Things very well, especially Paintings; and upon great Examination in Court, by Ruffel the Interpreter, about several Matters, to which he in all Appearance made a ready Answer by Signs to Ruffel; and upon reading an Order for the Dismission of a Bill in Chancery, which had been brought to prove his Incapacity to manage his Affairs; and a Decree in Chancery appointing a Partition

Cases of Practice in the

Trin. 6 Geo. I. titution of the Estate; and upon Ferrers's appearing to consent, as well by his own Gesture as upon Russell's Oath, the Court ordered the Fine to pass, and a Special Rule was drawn up this Term for that Purpose.

Delmaida v. Bravo. *Trin. 6 Geo. I.*

Cooke.

The Return
of a Special
Writ made
after the Writ
filed.

*Page 20

Dalton Sheriff
189.

A Motion to make a Return to an Original; the Special Original was sued out, but the common Return omitted, which, Time out of Mind, has been constantly made by * the Attorney of Course, but here by the Neglect of the Attorney the Return of the Original was omitted, and the Original filed without any Return at all; this Matter was several Times debated in Court, and Counsel were heard on both Sides; at Length the Court agreed that the Sheriff should, if he desired it, have Leave to make a Return, and made a Rule accordingly.

Court of Common Pleas.

Mich. 7 G. I.

Videon & al' Executors v. Cooke,
Rot. 1437. Trin. 6 Geo. I.

Cooke.

IN an Action on the Case on several Promises laid in the Life-Time of the Testator for Meat and Drink, the Plaintiffs were Non-suited on a Trial at the Assizes; and now upon Motion to set aside the Costs taxed on the Non-suit, the whole Court were of Opinion that no Costs ought to be taxed.

No Costs against an Executor or Administrator, on a Non-suit at Assizes.
Ante 14.
Post. Atkins v. Spence, Mich. 4 Geo. II.

Bettinson, Bart. *versus* Henchman
& al', Farrington v. eodem. *Mich.*
7 Geo. I. 1720.

UPON a Motion to set aside a Writ of Inquiry of Damages in Prohibition, after Judgment by Default, upon which the Jury had found Damages for the Plaintiff; so that he insisted he was intitled to Costs of the Action likewise; it was alledged on the Behalf of the Plaintiff, that the citing him to appear in the Spiritual Court in a Plea of which that Court has no Cognizance, and whereby the Plaintiff may sustain great Damages, is a Contempt

What Costs on Inquiry in Prohibition.

Fitz. Attachment 15.
3 Lewin 613.
Cro. Car. 559.
W. Jones 447.

Cases of Practice in the

Mich. 7 Geo. I.

Stat. Gloucester, cap. 1.

* Page 21

Ante 11.

tempt of the Laws of the Land, and therefore the Defendants ought to make Satisfaction to the Plaintiff for the Damages he sustains by their Proceedings; and this the Defendants tacitly admit by suffering Judgment to go against them by Default, and therefore the Plaintiff, by the Common Law, is intitled to a Writ to inquire of his Damages, and of Consequence by the Statute of Gloucester to his Costs; of which Opinion the Court inclined to be, but took further Time to consider of the Matter: Afterwards on hearing Counsel on both Sides, and on great Debate, the Plaintiff had Liberty to proceed on his Inquiry, and the Court ordered * Costs to be taxed. But the Question then was, What Costs the Plaintiff in Prohibition was to have: For the Defendants it was insisted that the Plaintiff ought not to have Costs of the Suggestion, and of the Proceedings incident thereto, as it had been adjudged in this Court, Hil. 2 Geo. I. *Wills & al' versus Turner & al'*, because those Costs were ordered upon reading the Act of Parliament of the 8th and 9th of Wm. III. which expressly gives Costs after Plea pleaded, or Demurrer joined, and so consequently the Costs of the whole; but in this Case it would be hard for the Defendant to pay any Costs before the Declaration, because

Court of Common Pleas.

because he was prosecuted for a Con-^{Mich. 7 Geo. I.}
tempt at Common Law, as Judge of
the Spiritual Court, and he could not
possibly be in Contempt before the
Rule was made absolute to stay his
Proceedings: For the Plaintiff it was
insisted that he should have the Costs
of the Suggestion, and likewise of the
Motion for a Prohibition, these being
Proceedings in this Court, and taxa-
ble by the Prothonotary as well as the
Rest. But after Debating the Mat-
ter, the Court made an Order, That
the Plaintiff should have Costs only
from the Time that the Rule for the
Prohibition was made absolute and
fixed this as a standing Rule.

Mich. 7 Geo. I.

A Motion by Mr. Serjeant Webb, on
the Behalf of three poor Priso-
ners of the Fleet, craving an Allow-
ance out of the Poores Box; the Lord
Chief Justice King declared, that those
poor Prisoners, on making such Oath
as is usual, and applying to him at his
Chambers, should have an Order for
the Allowance.

Prisoners inti-
tled to the
Poores Box.

See the Rule
Easter 3 Geo.
II. sec. 16.

Cases of Practice in the

Mich. 7 Geo. I.

Locke versus Hyet and others.
Mich. 7 Geo. I.

Foley.

In Prohibition
Liberty to in-
spect Parish
Books.

Post. Knight

v. Wotton,

Hil. 11 Geo. I.

Davis v. Edwards, Hil. 5 Geo. II.

IN Prohibition a Motion by M^r.
Serjeant Pengelly, to have Liber-
ty to inspect Parish Books, and to
have them produced at the Trial, and
granted.

** Page 22*

Costs denied
upon an Acti-
on for Words,
tho' the De-
fendant plead-
ed a special
Justification.

** Anonymus. Mich. 7 Geo. I.*

IN an Action on the Case for Words,
to which the Defendant pleaded a
Special Justification, the Jury having
found Damages under 40 s. it was
moved that the Prothonotary might
tax for the Plaintiff Costs de Incre-
mento; and it was insisted on as a con-
stant Rule, that in all Cases where
there is any Special Pleading, the
Plaintiff shall recover his Costs de In-
cremento; but the Court held that it is
still an Action for Words within the
Statute 21 Jac. I. cap. 16. and must be
governed thereby, and if the Plaintiff
does not recover above 40 s. he shall
have no more Costs than Damages.

Pempe

Court of Common Pleas.

Trin. 7 Geo. I.

Pemple qui tam, &c. *versus* Tin-
sley. *Trin. 7 Geo. I. 1721.*

Borret.

IN Debt on a Statute of 5 Eliz. cap.
4. sec. 31. for exercising a Trade
contrary to the said Statute. Upon a
Verdict for the Defendant, the Plain-
tiff moved the Court, that the Defen-
dant should not be allowed any Costs;
and upon hearing Counsel on both
Sides, the Court seemed to Doubt
and took Time to consider till next
Term, and then Costs were allowed.

Costs on a
Qui tam after
Verdict for
the Defen-
dant.

Salk. 30.

But see *Gynes*
v. Stephenson,
Hil. 6 Geo. II.
where on Ver-
dict for the
Plaintiff the
Court held he
should have no
Costs.

Lobb versus Dale. Trin. 7 Geo. I.

Cooke.

UPON a Demurrer set down the last
Day of Arguments, it appeared
that the Defendant's Attorney had ac-
cepted all the Demurrer-Books, but
had not delivered them to the Two
Puisne Judges; it was agreed that the
Course of the Court had always been,
that if the Defendant did not deliver
the Two Books to the Puisne Judges,
then the Plaintiff's Attorney might,
and in such Case, the Defendant should
not be heard till he had paid for those
Books.

Judgment on
Demurrer,
tho' neither
the Defendant
nor Plaintiff
had delivered
the Books to
the two puisne
Judges.

Cases of Practice in the

Trin. 7 Geo. I. Books. But the Plaintiff's Attorney in this Case had not * delivered the
*Page 23 Books to the Puisse Judges, as he should have done; however the Court were unwilling the Plaintiff should be delayed by the Defendant's Attorney's Default; and therefore gave Judgment for the Plaintiff, notwithstanding he had not strictly complied with the accustomed Rule of Practice.

*Reg. Cur'
Eas. 27 Car.
II.*

Reg. 3.

Note; The Practice has since been altered by a Rule of Court, made *Mich. 6 Geo. II.* which directs that the Plaintiff's Attorney shall deliver all the Demurrer-Books to the Judges; and unless the Defendant's Attorney pay for two of the Books at least two Days before the Day of Argument, the Defendant shall not be heard by his Counsel.

Keep & al' *versus* Bull & ux'. *Trin.*
7 Geo. I.

A Fine by a Lond. ff. A Fine was to be acknowledged by a Deaf and Dumb Person; and upon his Wife's making it appear to the Court that she could converse with him by Signs, and give evident Proof of his Consent to what was proposed; and which was done to the Satisfaction of the Court; the Fine was ordered to pass.

A Fine by a
Deaf and
Dumb Person.
Ante p. 19.

Wright

Court of Common Pleas.

Wright *versus* Dingley. Mich. 8
Geo. I. 1721.

Trin. 9 Geo. I.

THE Court held, that in an Action of Debt upon a Recognizance, the Bail have till the Rising of the Court on the Appearance-Day of the Writ, to render the Defendant.

Ante p. 18.
Post. *Vandereft*
v. *Waylet*,
Trin. 2 & 3
Geo. II.

Anonymus. Easter 8 Geo. I. 1722.

IT was held by the whole Court, that a Plea in Abatement is void, if not delivered within four Days after Declaration delivered or left in the Office, tho' no Rule to plead be given.

Plea in Abate-
ment.
Post. *East*. 4.
Geo. II.
Biddleston v.
Acherley.

*Covert *versus* Allen. Trin. 9 Geo. I. *Page 24

Borret.

A Motion to stay Proceedings in an Action of Debt on a Recognizance, because a Writ of Error was brought upon the Original Judgment; the Court were unanimous that the Plaintiff might proceed to Judgment, but Execution to stay till the Error was determined.

Action of Debt
on the Recogn-
izance after a
Writ of Error
brought; *sed*
quære, &
vide post.
Newman v.
Butterworth,
Hil. 1734.
econtra.
Ante 18.

Cases of Practice in the

Trin. 9 Geo. I.

Beck versus Nicholls. Trin. 9 Geo. I.

Foley.

No Costs in
an Action of
Trespas tho'
Special.

*Stat. 22 &
23 Car. II.
c. 9.*

*Thomlinson v.
White, East.*

1735.

*Watkinson v.
Swyer, East.*

1 Geo. II.

AN Action of Trespas for breaking and opening Doors, and breaking and spoiling Locks and Bolts, and for beating and wounding the Plaintiff. Verdict for the Plaintiff, and 2 s. 6 d. Damages. The Court was moved for Costs de Incremento, but denied, because this is a Trespas against the Freehold, and an Assault and Battery joined, and in the first, the Title might have come in Question; and therefore in both Cases it was requisite that the Judge should certify, in order to intitle the Plaintiff to full Costs, which he had not done.

Rositer versus Bolting. Trin. 9 Geo. I.

Costs in Trespas.

*Stat. 22 &
23 Car. II.*

c. 9.

*Carruthers v.
Lamb, Mich.*

1734.

Parker v.

Davis, Mich.

1728.

*Thomlinson v.
White, East.*

1735.

Cooke.

Trespas for pushing the Tap out of a Barrel, by which Means the Beer was spilt, and Damages found under 40 s. The Court ordered full Costs to be taxed, for this is not within the Statute; for no Freehold could come in Question, and it is merely an Injury to the Plaintiff's Personal Property.

Miller

Court of Common Pleas.

Hil. 10 Geo. I.

* Miller, Serjeant at Law, *against*
Seagrave and his Wife. Hil. 10
Geo. I. 1723.

* Page 25

Foley.

IN Formedon in Remainder, Judgment was given for the Tenant upon Demurrer; the Question was whether Costs should be given according to the Act of the 8th and 9th of W. III. cap. 11. It was insisted by the Counsel for the Demandant, that the Tenant ought not to have Costs, because if the Demandant had recovered he could have had none, and so in Abatement, tho' after Demurrer, because the Plaintiff should have had none, since he recovers no Damages, the Judgment not being final, but only a Respondeas ouster, and tho' the Act of Parliament is general, that after Demurrer, and Judgment for the Defendant, he shall have his Costs; yet in the Case of Abatement, because the Plaintiff is intitled to none, neither shall the Defendant have any Costs, within the Meaning of the Act; the Intent of the Statute being only to extend the Defendant's Remedy for Costs to Demurrers in such Actions and Cases, where
Costs

No Costs in
Formedon after
Demurrer, and
Judgment for the
Defendant, on
Stat. 8 & 9
W. III. c. 11.
4 Jac. I. c. 3.

Salk. 194.

Cases of Practice in the

Trin. 10 Geo. I. Costs were before recoverable upon a Verdict or Nonsuit.

* *So in Quare
Impedit.
Ante 4.*

And tho' in Prohibition * after Demurrer joined the Defendant is always allowed his Costs; yet this is because Costs are recoverable therein upon a Verdict or Nonsuit, to which Cases only the Act was intended to extend. Cur⁹ advisare vult. Lord Chief Justice King, Mr. Justice Dormer, and Denton inclined against Costs; Mr. Justice Tracey for Costs. Afterwards this Point came on again, *Trin. 10 Geo. I.* and was solemnly debated, when the Court still inclined to allow no Costs, but took further Time to consider of it; and at last resolved that no Costs should be allowed.

Dean & al' *versus* Coward, (Bigg, Jun. Vouchee, de terris in Com. Berks.) *Trin. 10 Geo. I. 1724.*

Amendment
of a Recovery
denied.

Page 26 **A** Motion to amend a Recovery by putting in these Words, in Paroch' sc'e Marie in Wallingford, and in Paroch' de Wargrove, and a Rule to shew Cause granted; this was afterwards opposed strongly, King Chief Justice, Dormer and * Denton against the Amendment; but Tracey seemed for it, tho' the Parties

Court of Common Pleas.

ties were all Dead, and Purchasors in the Case. It was denied chiefly because, if the Amendment was made, the King would lose his Fine for the Parcels to be inserted; but see the same Case after, Mich. 13 Geo. I. where the Amendment is granted; and see *Jenkinson versus Staples*, Hil. 6 Geo. II.

Mich. 11 G.I.

See the next Case.

Cranmer, v. Cranmer, (Boucher Vouchee, de terris in Com. Wilts.) Trin. 10 Geo. I.

Amendment of a Recovery denied.

Ante 25.

See post. Dean v. Coward,

Mich. 13

Geo. II.

where an Amendment was granted, and Vills added, & Jenkinson v. Staples, Hil.

1732.

MOTION to amend a Recovery by putting in *Recloria de Lea & Decima eidem spectan'*; it appeared to be Right in the Deed to lead the Uses, and moved at the Vouchee's Request. Chief Justice: The King will lose his Fine, so the Amendment was denied.

Walpole v. Robinson. Mich. 11 Geo. I. 1724.

IN Debt upon a Bail-Bond, the Defendant pleaded *Comperuit ad diem*; And now a Motion was made to amend the Issue, in which the Condition of the Bail-Bond is misrecited, by making it agreeable to the Bond, on Payment

To amend Issue of *Comperuit ad diem.*

Post. Eason & ux' v. Wilkins & ux', Trin.

1734.

Cases of Practice, in the

East. 11 G. I. Payment of Costs; which was granted accordingly.

Knight v. Wotton. *Hil. 11 Geo. I.*

Borret.

To inspect the Publick Books of the Dean and Chapter of St. Paul's, &c. and take Copies.

Ante 6, 21.

Post. Davis v.

Edwards,

Hil. 5 Geo. II.

A Motion by Mr. Serjeant Glyde, for Liberty to inspect the Publick Books of the Dean and Chapter of St. Paul's and Bishop of London, to see if there be any Confirmation entered of the Lease granted by the Archdeacon of Colchester, and to take Copies; and a Rule was granted accordingly.

** Page 27*

* Clarke, un' Attorn', v. Godfrey.
Easter 11 Geo. I. 1725.

Borret.

When an Attorney was to deliver a Bill in Order to sue for his Fees.

A Case made before Lord Chief Justice King, upon a Trial at Nisi prius, in an Action brought by the Plaintiff as an Attorney, for Fees, to which the Defendant had pleaded Non Assumpsit; the Bill was not delivered till after Notice of Trial; the Question was Whether the Bill ought not to be delivered before the Action brought?

In

Court of Common Pleas.

In Trinity Term following it was again moved, and Mr. Justice Tracey said, he thought that the Defendant ought to have pleaded, that the Bill was not delivered according to the Stat. 3 Jac. I. which enacts, That every Attorney shall deliver a true Bill to his Client, before he shall charge him with any Fees. And this Matter having been debated in Court several Times, and it being insisted that the Practice had been for many Years to deliver a Bill any Time before the Trial; the Court was of Opinion that this was contrary to the Act of Parliament, and resolved for the future that no Action be brought for Fees, till after a Bill delivered.

East. 11 G. I
Post. Griffith
v. Squire,
Mich. 4 Geo.
II.
Marsh v. Car-
ter, Mich. 8
Geo. II.

It is now settled by the Act of 2 Geo. II. cap. 23. for the better Regulation of Attornies and Solicitors, that no Attorney or Solicitor shall commence or maintain any Action for the Recovery of any Fees, Charges or Disbursements, at Law or in Equity, till the Expiration of one Month after the Delivery of his Bill to the Party or Parties to be charged therewith, or left for him, her or them, at his, her or their Dwelling-house, or last Place of Abode; written in a common legible Hand, and in the *English* Tongue, (except Law-Terms and Names of Writs) and in Words at Length, (except Times and Sums) and subscribed by the Attorney.

Cases of Practice in the

Trin. 11 G. I.

Allgood v. Howard. *Easter 11 G. I.*

Cooke.

A Prisoner on a Contempt can't be charged with a Declaration without Leave of the Court.

*Stat. 8 & 9
W. III. cap.
27.*

* Page 28

*Post. Pepper
v. Barwen,
Mich. 1726.*

A Motion was made to stay Proceedings against the Defendant, who had been charged with a Declaration at the Plaintiff's Suit, while he remained in the Fleet Prison, for a Contempt of the Court; it was insisted that the Plaintiff could not deliver a Declaration against a Defendant in Prison for a Contempt, without having previously obtained the Leave of the Court for that Purpose; of which Opinion were the Court, and ordered Proceedings to stay accordingly; but the Court being now moved for that Purpose, gave Leave to deliver a Declaration de novo against the Defendant.

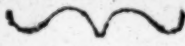
* Note; It was also held that a Person in Prison for Felony, &c. cannot be charged with a Declaration, without Leave of a Judge, the Attorney General, or proper Court.

Colt, Ar. v. Hall, Ar. *Trin. 11 Geo. I.*

Motion to set aside an Exigent returned before the *Quarto die post.*

A Motion to set aside the Return of the Exigent, and that the Defendant might be admitted to supersede the Exigent (altho' the Sheriff had returned the

Court of Common Pleas.

the Defendant Outlawed) because the *Trin. 11 Geo. I.*
Defendant had appeared before the 
Quarto die Post, and insisted that he had
four Days after the Return of the
Exigent, to appear and supersede it.
The Principal Question was, Whe-
ther, the Defendant not having ap-
peared before, or on the Return-Day,
and the Sheriff having actually return-
ed the Defendant Outlawed before the
Superseedeas issued, such Return should Ante 18.
not be conclusive to the Defendant; or
whether the Defendant had not four
Days after the Return of the Exigent
to appear, and put in Bail, and there-
fore the Outlawry on the Return-Day
irregular: For the Plaintiff, was cited
a Case in Point, which had been de-
termined lately in the King's Bench, be-
tween Sansome and Gore, and there
Lord Chief Justice Raymond declared,
that the Return of the Exigi facias on
the Return-Day was conclusive, and
refused to relieve the Defendant. But
the Court, on hearing Counsel on both
Sides, (notwithstanding that Case)
held that, by the Practice of this Court,
Defendants had always had till the
Quarto die post to appear to the Exigent;
and ordered that the Outlawry should
be discharged at the Plaintiff's Ex-
pence, but gave no Costs to the De-
fendant.

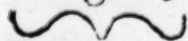
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Cases of Practice in the

East. 12 G. I.



* Page 29



Recogni-
zances on
Outlawries.
Vide *Stat. 4*
5 W. &
M. c. 18.

* Anonymus. *Mich. 12 Geo. I.*

IT was said by the Court, that upon
or before the Allowance of any Writ
of Error, or reversing any Outlawry,
the Defendant must still enter into a
Recognizance, with Condition to sa-
tisfy the Condemnation Money, ac-
cording to the Stat. 31 Eliz. cap. 3. sect. 3.

Dockary v. Lawrence. *East. 12 G. I.*

Borret.

Plea not a-
mended in
Abatement.
Salk. 52, 49.
2 Keb. 70.
5 Mod. 69.
Smith v. Scu-
damore, 2 Geo.
I. where A-
menment was
said to have
been denied.

A Motion to amend a Plea in Abate-
ment, by putting in Culpabilis in-
stead of Capitalis, which appears to be
only a Dispersion of the Clerk, and two
Counsel heard on each Side. For the
Plaintiff many Cases were cited a-
gainst Amendments. The Defen-
dant's Counsel cited none.

Eyre Chief Justice: Pleas in Abate-
ment have generally been denied to be
amended, because they are dilatory and
do not go to the Right of the Action,
and it will be dangerous to make a
Precedent, wherefore the Amendment
was denied.

Hing-

Court of Common Pleas.

Mich 13 G. I.

Hingham v. Collin. *Easter* 12 Geo. I.

Borret.

ON a Motion to set aside a Non-pros In what Time
for want of a Declaration, be: a Non-pros
cause the Defendant's Attorney had may be signed
not called for a Declaration the same for want of a
Term on which the Writ was returna- Declaration.
ble, but had called for a Declaration, Reg. Cur' Hil.
and signed a Non-pros the Term after: 9 Ann. Reg. 2.
The Court were of Opinion it was a
good Calling, and held the Non-pros
to be regular; afterwards by Consent
it was set aside on Payment of Costs.

* Deane & al' v. Coward, (Bigg, *Page 30
Jun. Vouchee, de terris in Com'
Berks.) Mich. 13 Geo. I. 1726.

THE Motion made in Trinity Term Recovery a-
10 Geo. I. for amending a Reco- mended.
very, was this Term revived; the
Judges being changed, instead of King, Ante 25. S. C.
Tracey, Dormer and Denton, now Eyre,
Price, Page and Denton; the chief Ob-
jection against it was, that the King
would lose his Fine by such considera- Bedford v.
E ble Cullen, ante 9.
Laming v.

Besland, ante 17. *Cranmer v. Cranmer*, ante 26. where an Addition
of Parcels was denied. *Post. Jenkinson v. Staples*, Hil. 6 Geo. II.
Shepherd and Harris, Hil. 9 Geo. II.

Cases of Practice in the

Mich. 13 G. I. ble Wills being added: But the Court declared unanimously now, that tho' the Parties were dead, yet as it appeared by the Deed that it was with their Consent, the Wills omitted by the Clerk should not prejudice a Family; and therefore it being the Intent of the Parties at that Time, the Court ordered the Amendment to be made, and so made the first Rule absolute.

Many Precedents were cited, and Rules for Amendments produced, the chief of which relating to this Head, were as follows, viz.

Wrightwick & al' versus Masters, Trin. 13 Car. I. A Recovery of three Messuages in New Church, L. and M. but New Church totally omitted; an Amendment was ordered.

Drake & al' versus Biddulph, Mich. 13 Car. I. Gulston. A Fine prosecuted (East. 13 Car. I.) of two Messuages and one Garden, that a Recovery thereof might be had; but by Mistake (in Trin. following) the Recovery was suffered of one Messuage and one Garden, and now ordered to be amended.

Courtney versus Blake, Hil. 3 Ann. Borret. The Writ of Covenant and all Entries and Proceedings thereon amended, by inserting the Words (& Knowlton.)

Parker & al' versus Cotton & ux', Mich. 1650. The Village of W. omitted in a Fine

Court of Common Pleas.

Fine levied Trin. 1649. but ordered to be inserted as well in the Writ of Covenant as the other Parts of the Fine, on the Oath and with the Consent of the Deforçant. *Mich. 13 G. I.*

* Cock v. Green. *Mich. 13 G. I.* * Page 31

Foley.

A Motion to set aside a Scire Facias against Bail in London, upon a Recognizance taken in Serjeants Inn in Fleetstreet, London, and Recorded at Westminster; the Court were of Opinion that the Scire Facias might issue either into London or Middlesex; but it was said, that in the Case of a Recognizance taken in the King's Bench, the Entry is coram Domino Rege apud Westm', and therefore must be in Middlesex only.

Scire Facias in London on a Recognizance taken in Serjeants Inn, Fleet street, and held good. Salk. 564, 600, 659. Dalton v. Teasdale, East. 2 G. II. See Cases in Law and Equity 290.

Smith v. Anderton. *Mich. 13 G. I.*

A Copy of a Special Original was served on the Defendant, and the Plaintiff proceeded thereon according to the Stat. 12 Geo. I. cap. 29. but all was set aside by the Court, for a Copy of the Capias should have been served.

Vide post. Peter v. Reginer, Mich. 11 Geo. II.

Cases of Practice in the

Mich. 13 G. I.

Pepper v. Bawden, Ar'. *Mich. 13*
Geo. I.

Borret.

Declaration
delivered to a
Prisoner, and
accepted, and
Judgment be-
fore Com-
plaint, held
good.

Ante 27.

A Declaration delivered to a Prisoner in the Fleet, who before stood charged with Contempts in Chancery; the Defendant accepted of it, and let the Plaintiff proceed to Judgment, and then moved the Court to set aside that Judgment upon the standing Practice, that no Proceedings should be against a Person charged with Contempts, without Leave of the Court first had; but the Court, on hearing Counsel on both Sides, declared that altho' the Plaintiff had not applied for Leave, yet the Defendant having accepted of the Declaration, and suffered Judgment to go against him before he complained thereof, he had waived the Advantage which he might have taken of the Irregularity, and should be bound by it, and therefore they discharged the Rule which had been granted to shew Cause.

Jack son

Court of Common Pleas.

* Jackson v. Duckett. Hil. 13 G. I.

Cooke.

IN an Action of Debt upon a Judgment, wherein above 10 l. had been recovered, the Question was, Whether the Defendant should be obliged to put in Special Bail? The Court were of Opinion, that if there was Bail in the Original Action, then no Bail is required in the Action upon the Judgment; but if no Bail in the Original Action, then Bail is to be put in where the Debt is above 10 l. and an Affidavit made thereof according to the late Act of Parliament.

Hil. 13 G. I.

* Page 32

Where Special Bail must be put in to an Action of Debt upon a Judgment.
Post. *Defflower v. Tut, East.*
13 Geo. I.
Revel v. Snowden,
Mich. 6 G. II.
Stat. 12 G. I. c. 29.
S. C. Praes. Reg. C. P. 54.
more fully reported.

Turner v. Shrimpton. Hil. 13 G. I.

Cooke.

A Declaration was delivered to the Defendant, whereas the Plaintiff's Attorney knew who was Attorney for the Defendant; the Court declared that such Delivery was irregular, and ordered an Imparllance; for he should have delivered it to the Defendant's Attorney, or have left it in the Office, and given Notice thereof to the Attorney.

Declaration delivered to the Defendant, not good if his Attorney is known.
Post. *Joy v. Francia,*
Mich. 3 G. II.

Cases of Practice in the

Hil. 13 G. I.

H. Englefield, per Catharinam Englefield prox' Amicam, v. Round.
Hil. 13 Geo. I.

Cooke.

Prochein Amy
to pay Costs
for her Default.

A Motion that the *Prochein Amy* should pay the Costs taxed for not proceeding to Trial; and upon hearing Counsel on both Sides, it was ordered accordingly.

Ante 14.
Post *Hayden*
v. *Norton*,
Mich. 4 G. II.

And the Lord Chief Justice declared that every *Prochein Amy* is made so by their own Consent, and that they, as well as Guardians and Executors or Administrators, are liable to pay Costs for their own Default.

Note; *Roper*, by next Friend, against *Harrison*, Mich. 10 Geo. II. on a Nonsuit; it was likewise resolved that the *Prochein Amy* should pay Costs.

* Page 33

Venue not
changed after
Plea pleaded.

See *Sabor* v.
Pat, Trin. 3
G. 4 Geo. II:
Treasure v.
Wright,
Mich. 4 G. II.

* *Carter*, Ar', *versus* *Dormer*, Ar',
Hil. 13 Geo. I.

Cooke.

A Motion to change the Venue after Plea pleaded and Notice of Trial given, but denied by the whole Court.

Rayner

Court of Common Pleas.

Hil. 13 G. I.

Rayner v. Stamp. *Hil. 13 Geo. I.*

Borret.

UPON a Motion against a Bailiff of a Liberty, for retaking a Defendant on a Sunday that had given insufficient Bail; the Court seemed to be of Opinion that he might retake the Defendant on a fresh Pursuit; but in this Case, Bail was put in above, but no regular Exception taken at the Filacer's Office, which ought to have been done; so an Attachment was granted against the Bailiff.

Attachment against a Bailiff for retaking the Defendant on a Sunday.
Exception against Bail.

Note; Exception against Bail must be entered in the Bail-book or upon the Bail-piece, for no Exception by Notice is good without that is first done.

Post. Busby v. Walker, Mich. 3 Geo. II.

Watson v. Jordan, an Attorney.

Hil. 13 Geo. I. Rot. 1643.

Cooke.

UPON an Information against the Defendant for practising as an Attorney after Conviction of Subornation of Perjury, upon hearing Counsel on both Sides, on a Summary Examination, pursuant to the Act of the 12th of Geo. I. cap. 29. several Variations were insisted upon, viz. Contrefur' for Contra-

An Information on the Stat. 12 Geo. I. cap. 29. against the Defendant for practising after Conviction for Subornation of Perjury.

Cases of Practice in the

Hil. 13 G. I. factur' in the Recital of the Commission of Oyer and Terminer, and the Word Majorum instead of Majorem, and a Variance between the Issue delivered and the Issue entered on the Roll, viz. Woolstaston instead of Woolaston, and the Word Regnorum left out of the Record; and that the Proceedings ought to be as strict as other Criminal Proceedings at Common Law. On the other Side it was said, that whatever Variance there is, it appears that the Persons in Commission had Power to try the Crime of which he was convicted: Afterwards another Objection was taken, that the Information says, Contra formam Statut, whereas it does not appear that the Defendant has acted contrary to the Statute, for * tho' the Act says, if he shall practise he shall be transported, yet it is not enacted that he shall not practise,

* Page 34

Note; There being no restraining Words in the Statute to support this Information, the Plaintiff did not proceed further therein.

Court of Common Pleas.

East. 13 G. I.

Delafield v. Jones. *Hil. 13 Geo. I.*

Foley.

THE Court declared that the Service of Process by a Bailiff, who could neither write nor read was not good, and that the Stat. 12 Geo. I. c. 29. intended that Process should be served by literate Persons, because it directs that Affidavit shall be made of the Service of a Copy of the Process.

Process to be served by a literate Person.

Stat. 12 Geo. I cap. 29.

Farmer v. Jenkinson. *East. 13 G. I.*

Cooke.

THE Court declared that where a Defendant being in Custody is intitled to a Superfedeas, the Plaintiff can't detain him by delivering a Declaration, tho' the Defendant neglects to procure himself to be superseded.

No Declaration to be delivered to a Prisoner after two Terms.

Reg. Cur. East. 8 Geo. I. Hil. 14 & 15 Car. II.

Deflowr v. Tutt. *Easter 13 Geo. I.*

Cooke.

ON a Bottomry Bond for Payment of Money inter alia, the Court inclined to think the Defendant should give Bail.

Bail. Ante 32.

Laycock

Cases of Practice in the

East. 13 G. I.

Laycock v. Arthur. *Easter 13 G. I.*

Cooke.

*Scire facias against Bail.
Ante 18.
Post. Price &
Selby v. Lewis,
Hil. 8 Geo. II.*

THE Court held, that in Order to charge the Bail, a Ca' Sa' against the Principal must be left with the Sheriff four Days before it is returnable.

* Page 35 * Jennings v. West. *Easter 13 G. I.*

Cooke.

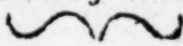
Execution executed, yet a Writ of Error being allowed before it was executed, and Notice only to the Agent, set aside.

*Post. 39
Miller v.
Miller, Mich.
1 Geo. II.*

A Motion to set aside an Execution executed: The Case was, the Defendant suffered Judgment by Default, and staid till after Execution was sent down into Dorsetshire, and then got a Writ of Error allowed, and served the Agent with the Allowance thereof, and tho' it was impossible to stop the Execution in Dorsetshire, the Writ having been sent down some Time before; yet the Court set aside the Execution, and ordered Restitution, and would not give the Plaintiff his Costs; for the Allowance of a Writ of Error is a Superseas from the Time of the Allowance, tho' the Sheriff executes the Writ before Notice thereof was given; and yet neither the Plaintiff nor his Attorney,

nor

Court of Common Pleas.

nor Agent, nor the Sheriff, were blame- *Trin. 13 G. I.*
able for any Misconduct. 

Lawson v. Hambleton. *East. 13 G. I.*

Cooke.

THE Court held, that in all Cases the Plaintiff's Attorney may sign Judgment, for refusing to pay for the Copy of an Issue or Demurrer-Book, except where the Defendant is a Prisoner, and in that Case he is restrained from signing it, only where no Attorney appears to be concerned for the Prisoner.

Judgment for
not paying for
Issue or De-
murrer-Book.

Aplin v. Constable. *Trin. 13 G. I.*

1727. *Entered Trin. 12 G. I.*

Rot. 652.

Foley.

UPON a Rule made *East. 13 Geo. I.* Costs upon a
for the Plaintiff to shew Cause Non-suit at the
why Costs should not be taxed upon a Assizes upon
Non-suit at the Assizes; on hearing Coun- an Issue in
sel on both Sides, it appeared that the Abatement.
Non-suit was on an Issue in Abatement. *Ante 4, 25.*
and the Court held clearly, that upon
a Non-suit on such an Issue, the Defen-
dant shall have his Costs, for if it had
been found for the Plaintiff, it would
have

Cases of Practice in the

Trin. 13 G. I. have been Peremptory, and he should have had his Costs; and altho', if the Defendant * has Judgment on a Demurrer in Abatement, he shall have no Costs, yet this is because the Suit would not have been ended by such Demurrer, in case Judgment had been given for the Plaintiff, but a Respondeas Ouster only must have been awarded, upon which the Plaintiff should have had no Costs.

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Lane and others v. Wilkinson.

Trin. 13 Geo. I.

Money paid
into Court.

Ante 5.

Post. Rathbon,

v. Stedman,

Trin. 2 & 3

Geo. II.

Maddox v.

Pafton, East.

8 Geo. II.

MONEY being brought into Court on the Common Rule, and the Plaintiff nonsuited, the Defendant moved to have the Money out of Court; but the Motion was denied; for he paid it into Court, as knowing and being conscious that he owed the Plaintiff so much, and therefore the Plaintiff shall have it.

Bristow & al' v. Dickon. *Trin. 13
Geo. I.*

Cap' utlagat'

not good, be-

ing tested af-

ter Defen-

dant's Death.

Borret.

THE Court held that no Capias utlagatum can be sued out after the Death of the Defendant.

Note;

Court of Common Pleas.

Note; In this Case the Writ was tested *Trin. 13 G. I.*
after the Death of the Defendant.

Gardiner v. Forbes. *Trin. 13 G. I.*

AN Action for Words laid in London, and a Motion made to change the Venue, upon Affidavit of the Words being spoken in the Town of Southampton, but denied upon hearing Counsel on both Sides, because the Court doth not use to change the Venue into a City or Town and County within it self, without Consent of the Parties.

Note; *Earby versus Windows*, Hil. 5 G. II. *Foley*. For the same Reason a Motion to change the Venue from *Middlesex* to the City of *Tork* was denied.

In what Time the Defendant must apply to the Court to have the Venue changed, *vide post*. *Costar versus Standen*, Hil. 8 Geo. II. and the Cases there cited.

* And *Robins versus Webber*, Hil. 1 G. II. a Motion to change the Venue from *Middlesex* to the City of *Exon*. was denied.

But *vide post*. *Biddolph versus Brown*, Hil. 1 Geo. II. where it has been granted into *London*.

Venue not changed into a Town and County.
Post. Lane v. Newman, Hil. 6 Geo. II.
Herbert v. Shaw, Trin. 6 & 7 Geo. II.
Ward v. Colclough, Trin. 8 & 9 Geo. II.
Lord Griffin v. Bugby, Trin. 10 Geo. II.
Box v. Read, Trin. 10 Geo. II.
Mills v. Johnson, Mic. 10 Geo. II.

*Page 37

Cases of Practice in the

Mich. 1 G. II.

Le Pla v. Warren. Trin. 13 G. I.

Cooke.

*Nil debet no
Plea to a De-
claration on a
Bail-Bond.*

UPON a Demurrer to Nil debet pleaded to a Declaration on a Bail-Bond, the Court were unanimously of Opinion that such Plea was not good.

May v. Annis. Trin. 13 Geo. I.

*Time of en-
tering Ne reci-
piaturs.*

Cooke.

*Reg. Cur.
Pas. 1 Jac. II.
Hil. 8 Geo. II.
reg. 2.
Post. *Duel v.*
Storv. Mich.
1730.*

IN this Cause it was resolved, that Ne Recipiaturs in London and Middlesex might be entered after eight a Clock in the Evening, the Day next but one before the Day of Sitting.

Gibson v. Quilter. Mich. 1 G. II.

Foley.

*Warrant of
Attorney de-
nied to be filed
after Writ of
Error, and
Certiorari re-
turned that no
Warrant was*

UPON a Writ of Error, the Want of a Warrant of Attorney had been assigned for Error, and a Certiorari returned, that no Warrant of Attorney was filed, and a Motion was made

*filed. Ante 10. Post. *The Dutch East India Company v. Henriques,*
*East. 1 Geo. II.**

Court of Common Pleas.

made for Leave to file a Warrant of *Mich. 1 G. II.*
Attorney for the Plaintiff in the Original
Action, and granted upon the Common
Rule, to pay Costs if the Plaintiff
in Error would not further proceed:
A second Certiorari was sued out, and
a Return thereto, that Warrants were
filed: Afterwards upon Motion, a
Rule was made to shew Cause why the
Rule for filing the Warrant of Attor-
ney should not be set aside; and now
upon hearing Counsel on both Sides
on shewing Cause, and after great De-
bate, the Judges gave their Opinions
seriatim, and set aside the Rule for
filing the Warrant.

Note; This was for want of filing the
Plaintiff's Warrant of Attorney.

* *Beach & al' v. Smith, Ar'. Mich. 1 Geo. II.* * *Page 38*

Cooke.

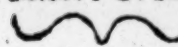
IN an Action of Covenant arising in
London a Testatum Capias issued to the
County Palatine of Durham, and a
Copy thereof having been served on the
Defendant, the Court was moved to
stay Proceedings; and Counsel being
heard on both Sides, the Court gave
their

On a *Testatum*
Capias ad re-
spondend. to
Durham; the
Party must be
served with
the Bishop's
Precept.
S. C. Praer.
Reg. C. P.

343.

But see *Stat. 5 Geo. II. cap. 27*, and the Construction thereof, *Post.*
Byer v. Whitaker, Trin. 3 and 9 Geo. II.

Cases of Practice in the

Mich. 1 G. II.  their Opinions seriatim, that the Testatum Capias to the Bishop was not the Process that the Defendant should be served with, pursuant to the Stat. 12 Geo. I. cap. 29. but that the Capias which the Bishop issues, is the proper Process wherewith he should have been served, and upon which he would have been arrested, if this Act had not been made, and the Act hath not altered the Law in that Particular; and thereupon the Court stayed the Proceedings which had been had on the Service of the Testatum Capias.

Boyd qui tam *against* The Hundred of Exminster.

*Venire on Stat.
Hue and Cry,
13 E. I.
27 Eliz. cap.
13.*

** Stat. 4 &
5 Ann.*

A Motion to set aside the Trial had in this Cause, because the Venire was awarded de Corpore Com. alias quam de hundred de Exminster, whereas the Action was on a penal Statute, viz. the Statute of Hue and Cry, and so not within the * Act for the Amendment of the Law. But the Court were of Opinion that the Statute of Hue and Cry could not be esteemed a Penal Statute, but an Act made to give the Party a Satisfaction for a Wrong done, and therefore held the Venire well awarded.

Delafontayne

Court of Common Pleas.

Mich. 1 G. II.

Delafountayne v. Myngs. Mich.
1 Geo. II.

Cooke.

ON a Motion to set aside a Judgment, it appeared that a Plea in Abatement had been pleaded without a Serjeant's Hand, and without an Affidavit to verify it, tho' the Truth of the Plea did not appear to the Court: Per Cur' this is no Plea, and the Judgment must stand.

Note; By the *Stat. 4 & 5 Ann.* such Plea is not to be received, unless the Party offering the same doth by Affidavit prove the Truth thereof, or shew some probable Matter to the * Court to induce them to believe that the Fact of such dilatory Plea is true.

Plea in Abatement without Affidavit, or without a Serjeant's Hand, not to be received.

* Page 39

And *Note;* *Wilson, Executor, versus Palmer, Mich. 12 Geo. I.* It was likewise held that such Plea, where the Truth thereof does not otherwise appear to the Court, without an Affidavit to verify it, was no Plea.

Post. Tomkin v. Perry, Trin.

1735. Hart v. Jewks, East.

1733.

And *Cartwright versus Skrimshire, Hil. 6 Geo. II. Cooke;* the like Resoulution.

Cases of Practice in the

Mich. 1 G. II.

Miller v. Miller. *Mich. 1 Geo. II.*

Cooke.

The Allowance of a Writ of Error is a *Superfedeas*, if Execution be executed after the Allowance.

Philips v.

Thompson,

3 *Lew.* 191,

312.

1 *Vent.* 30.

2 *Keb.* 508.

Mod. 28.

Jennings v.

West, Ante 35.

The Allowance

is Notice of it

self, Salk. 321.

Yet to bring

the Attorney

into Contempt

he must have

had Notice

thereof. Quæ-

re, If the At-

torney be

known, 1 Ro.

Ab. 492.

A Motion for Restitution after a Writ of Error; the Fieri facias was sued out on Friday, the Warrant delivered that Evening to the Officer, a Writ of Error allowed on Saturday Morning, and Notice delivered at the Plaintiff's Attorney's House about a Quarter after Eleven that Morning, Execution executed before the Plaintiff's Attorney could countermand it, viz. about One at Hamersmith. Per Cur': The Allowance of the Writ of Error with the Clerk of the Errors, is a *Superfedeas* without Notice of such Allowance. And tho' it was insisted, that this Execution being taken out before the Allowance of the Writ of Error might be executed, notwithstanding such Allowance, the Execution being awarded by the Court; yet it was declared to be the settled Opinion of the Court, that the Allowance of a Writ of Error is a *Superfedeas*, even where the Execution issues before and is executed after the Allowance thereof, without Notice of it.

Court of Common Pleas.

Mich. 1 G. II.

Ilatt & ux' *versus* Lisset. *Mich. 1*
Geo. II. 1727.

Cooke.

IN a Homine replegiando for taking the Plaintiff's Wife, a Capias, Alias & Pluries issued; on the Pluries the Sheriff of Berks returned Elongata; a Capias in Withernam issued; and a Habeas Corpus was moved for to bring up the Body of the Defendant (who had been arrested on the Capias in Withernam) into Court; upon the Return, the Defendant was brought into Court, and the Plaintiffs were called * upon to declare instanter, for want of which they must have been forthwith nonsuited; thereupon the following Declaration was delivered in Court, and a Plea put in thereto instanter, viz.

S. C. Pract.
Reg. C.P. 221.
Upon a Homine replegiando the Proceedings and Recognizance taken.

* Page 40

Cases of Practice in the

Mich. 1 Geo. II.

Berks, ff. **N** Ehemiah Lisset, Gent. was attached to answer William Illatt and Sarah his Wife of a Plea, wherefore he took the said Sarah, and her so taken detaineth, &c. and whereupon the said W. and S. by H. M. their Attorney complain that the said N. the 20th Day of May in the first Year of the Reign of our now Lord the King, at Wantage in the County aforesaid, took the said S. and her so taken as yet detaineth, whereby they say t at they are injured, and have received Damage to the Value of 5000l. and thereupon they bring Suit, &c.

And the aforesaid Nehemiah in his proper Person comes and defends the Force and Injury, when, &c. and saith, that he did not take her, the said Sarah, in the said Declaration mentioned, in Manner and Form as the said William Illatt against him above complains: And of this he puts himself upon the Country.

Mich. primo Geo. II.
Regis.

Berks, ff. **N** Ehemias Lisset
Gen' Attach' fuit ad respondend' Will'o Illatt & Sare ux' ejus de placito quare ip'am Saram cepit & captam tenet, &c. unde iidem W. & S. per H. M. Attorn' suum queruntur qd' pred' N. 20 die Maii Anno Regni D'ni Regis nunc primo apud Wantage in Com' pred' ipsam S. cepit & ipsam adhuc captam tenet unde dicunt qd' det'iorat' sunt & dampnum h'ent ad valenc' quinque Mille Librar' & inde produc' sectam, &c.

Et p'd'us Nehemias in pr'ia persona sua ven' & defend' Vim & injur' quando, &c. Et dicit qd' ipse non cepit ipsam pred' Saram in Narr' pred' mentionat' modo & forma prout pred' Will'us Illatt & Sara ux' ejus sup'ius versus eum queruntur: Et de hoc ponit se super p'riam.

Upon

Court of Common Pleas.

Upon the Plea being delivered in Court the Defendant was admitted to Bail, and put in four Bail; the Defendant's own Recognizance was in 500l. the other Bail in 250l. each, viz. Sir John Eyles, Bart. Benjamin Styles, Esq; Sir Conrade Springell, Knt. and Joseph Chitty, Esq; the Recognizance was to the Effect following, viz. The Party himself is bound to the Plaintiff in 500l. and the Bail * are separately bound to the Plaintiff in 250l. to be levied of their Goods, Chattels, Lands and Tenements, upon Condition that the said N. Lisset do appear de die in diem in this Court, and if Judgment be given against the said Defendant, that the said Defendant render his Body in Withernam, to remain in Custody, till he render Sarah the Wife of the said Plaintiff, and permit her to go at large; upon this, Recognizance being taken, the Sheriff was discharged and the Defendant set at Liberty.

Upon the Trial of this Cause the Plaintiffs were nonsuited, and a Question arose, which now came on to be moved in Court, Whether the Defendant should have Costs; and the Court held clearly that the Defendant should have Costs by the Statute of 4 Jac. I. cap. 3. which enacts, That the Defendant shall have Costs in all Cases where the Plaintiff might have Costs;

Mich. 1 G. II

Registrum Bre.

79, 80.

F. N. B. 66,

67, 68.

Rastal's Ent.

402.

* Page 41

Costs for the
Defendant.

Cases of Practice in the

Hil. 1 G. II. and in a *Homine Replegiando* the Plaintiff should have had Costs, by the Statute of Gloucester, 6 E. I. cap. 1. if he had prevailed, for Damages are to be recovered therein.

Upton versus Pullyn.

Foley.

*S. C. Pract.
Reg. C. P. 282.
What Pleas
may be plead-
ed without a
Serjeant's
Hand.*

PER Dures pleaded without a Serjeant's Hand, upon which Occasion a Question arose, what Sort of Pleas were to have a Serjeant's Hand; It was held by the Court and settled, that *Comperuit ad diem, Son assault Demesne, Plene Administravit, Riens per discent, Ne unques Executor, Nul tiel Record, Per Minas, Per Dures, Infra Eratem & Solvit ad diem* need no Serjeant's Hand, but *Non assumpsit infra sex annos* must have a Serjeant's Hand.

Biddolph & al' versus Browne.

*Venue changed to the City of London.
Ante 36. Gardiner v. Forbes,
Post. Lane v. Newoman,
Hil. 6 Geo. II.*

A Motion to change the Venue from the County of Middlesex to London, on Affidavit that the Cause of Action, if any, arose in London; and the Court ordered the Venue to be changed; for London has always been considered in this respect as a County at large, and such Motions have usually

Court of Common Pleas.

ally been granted, tho' not to any other City or Town which is a County of itself. *Hil. 1 Geo. II.*

* *Durham versus Price.*

* Page 42

IN Replevin after Non cepit pleaded, and a Return' habend' awarded, the Defendants procured a Writ of Inquiry of Damages to be executed; but the Court set aside the Writ of Inquiry and the Inquisition taken thereon, because there can be no Inquiry in Replevin for the Defendant where there has been no Avowry; for on all Pleadings in Replevin where there has been no Avowry the Defendant has a Non-pross and Costs; and the Avowry which is in the Nature of a Declaration, is the Ground of an Inquiry for the Defendant.

No Inquiry for Defendant in Replevin where there is no Avowry.

Cotton, Ar', versus Hormonden.

Borret.

A Motion to set aside a Writ of Inquiry, because the Jury had found Interest on the Note mentioned in the Plaintiff's Declaration; but the Court were of Opinion, that the Jury had done well to give Interest, and declared

Interest given on a Note upon the Execution of an Inquiry, and confirmed by the Court.

Randolph v. Reginer, Trin. 2 Geo. II.

Cases of Practice in the

Hil. 1 Geo. II. that the Plaintiff was intitled to the full Interest from the Time of the Money lent, and discharged the Rule to shew Cause.

Rocks v. Atease, ex Dimiss' Dom.
Briscoe vid. & al'.

Cooke.

Motion to bring Money into Court on an Ejectment brought for Nonpayment of a Fine to the Lord of the Manor, but denied.
Ante Anon.
Page 6. and vide *Stat. 4 G. II. c. 28.*

A Motion to bring 100l. into Court, the Defendant suggesting that the Ejectment was brought for Nonpayment of a Fine, and for letting a Lease contrary to the Custom of the Manor; and therefore he proposed to bring in the 100l. to answer the Fine, and that the Lessor of the Plaintiff should proceed at his Peril for the Forfeiture in respect to the Lease supposed to be let contrary to the Custom of the Manor; but the Court denied the Motion; for tho' it can be no Disadvantage to a Lessor to stay Proceedings on Payment of his Rent and Costs: Yet the granting this Motion may probably give the Defendant such an Advantage over the Lessors, who have brought this Ejectment for a just Cause, as may do them Injustice.

Holdfast

Court of Common Pleas.

* Holdfast *versus* Carlton.

Hil. 1 Geo. II.

* Page 43

Foley.

A Motion was made the last Day of the Term to plead Antient Demesne, but denied because it was not moved within the Time limited to plead in Abatement, viz. within four Days after Declaration delivered or left in the Office.

Plea of Antient Demesne denied because too late to plead to the Jurisdiction of the Court. See post. *Smith v. Roe, Trin.*

1734. *Bid-*

deffon v. Acherley, East. 4 Geo. II.

Turner *versus* Bayly.

Cooke.

A Motion to set aside a Judgment obtained upon an Assignment of the Bail-bond. The Defendant insisted that such Action could not be maintained, because the Bail-bond was taken for more than double the Sum the Plaintiff had sworn due. The Court seemed to be of Opinion, that if the Judgment was regular, the Point about taking more than double the Sum on the Bail-bond could not come in Question; but that this Case might be settled, the Court put it off till next Term, it being a new Point on the Act of 12 Geo. I. cap. 29. but the Parties having

Bail-Bond taken for more than double the Sum sworn due.

Cases of Practice in the

East. 1 G. II. having agreed, the Point was not then settled.

Note; It seemed to be agreed that the Bail-bond may be taken in double the Sum sworn due.

May v. Constable. *East. 1 Geo. II.*

Cooke.

No entering Clerk to be Bail.

Reg. Cur'

Mich. 1654.

sect. 1. Taylor

v. Fuller,

East. 4 G. II.

See reg. Mich.

6 Geo. II.

UPON justifying of Bail, *Mr. Mould* one of the entering Clerks of this Court offered to be Bail; it was objected that he is within the Meaning of the Rule of *Mich. 1654. sect. 1.* which says no Attorney shall be Bail in any Action; the Court said that the old Rule must be taken literally, therefore *Mr. Mould* was allowed to be Bail, but all declared that the Rule should for the future extend to all entering Clerks.

*Page 44

* *Wicking & al' v. Cockledge.*

Borret.

Bail filed with the Filazer of a wrong County is no Bail.

A Motion to stay Proceedings on the Bail-bond; the Case was, *One Hall* being Defendant in the Original Action was arrested on a Testatum Capias into Suffolk out of London, and by Mistake the Bail was taken and filed with

Court of Common Pleas.

with the Filazer of Suffolk, but should have been filed with the Filazer of London; the Court held the Proceedings on the Bail-bond regular, and would not stay them, but upon Payment of Costs, and the Defendant's giving the Plaintiff Judgment on the Bond to Sheriff, to stand as a Security for the Plaintiff's Debt, and the Original Defendant's accepting a Declaration, and pleading thereto and taking Notice of Trial after Term; but the Defendant not consenting to these Terms no Rule was made. *East. 1 G. II.*

The Dutch East India Company
versus Henriques & al'.

Borret.

A Motion to amend the Warrant of Attorney filed, by making it Debt instead of Case; upon hearing Counsel on both Sides, and citing many Cases the Court ordered it to be amended; and if the adverse Party does not proceed in Error, Costs to be paid him.

To amend a Warrant of Attorney by making it Debt instead of Case.

Watkinson

Cases of Practice in the

East. 1 G. II.

Watkinson *against* Swyer and others.

Foley.

*S. C. Pract.
Reg. C.P. 112.
Costs taxed in
Trespas, Da-
mages 3 s. 4 d.
Costs 40 s. no
Certificate;
the 40 s. gi-
ven is the Act
of the Jury;
the Prothono-
tary can sign
no other Judg-
ment.*

* Page 45

*Stat. 22 &
23 Car. II.
cap. 9.
1 Salk. 207.*

A Motion for Judgment upon Nul tiel Record, in an Action brought upon a Judgment; the Original Action was (a) Trespas, and 3 s. 4 d. Damages given by the Jury, and they also gave 40 s. Costs, and 6 s. 8 d. the Capiatur Fine was allowed by the Prothonotary; in all 50 s. It was insisted by Mr. Serjeant Chapple, that the Judgment was * erroneous, because the Jury had allowed more Costs than Damages; but the Court over-ruled his Objection, for the Jury are not bound by the Statute, and the Prothonotary must sign Judgment according to the Verdict; and as to the Capiatur Fine, the Prothonotary is directed by the Stat. 5 & 6 W. & M. c. 12. to allow it to the Plaintiff in Increase of Costs. He then insisted on a Variance

(a) Where an Action of Trespas is brought in any inferior Court, there the Plaintiff will have his Costs, for Stat. 43 Eliz. c. 6. 22 & 23 Car. II. c. 9. 8 & 9 W. III. c. 10. which give no more Costs than Damages in Actions of Trespas, do not extend to inferior Courts; and tho' the Defendant remove the Cause, and a Verdict be given above for the Plaintiff, and Damages under 40 s. yet the Plaintiff shall have his full Costs, because he had made his Election in the inferior Court where he would have had Costs; and the Defendant shall not reap such an Advantage by removing the Cause.

Court of Common Pleas.

Variance between the Issue delivered and the Record, as to one of the Defendants Name, viz. Eusterce in the Issue, and Curtels in the Record, which the Court held to be a material Variance; and therefore a Rule was made for Judgment for the Defendant, unless Cause shewn to the contrary on Monday next, which was afterwards made absolute on the Secondary's Certificate that no Cause was shewn.

Trin. 2 G. II.

Post. Eggleston v. Newman, Hil. 1732. Thomlinson v. White, East. 1735.

Williams v. French. *Trin. 2 Geo. II.*

Cooke.

IN Easter Term a Motion was made to put off a Trial to Michaelmas Term, but denied as a Thing never done, for with the same Reason it may be put off for ten Terms, and at that Rate the Plaintiff might be delayed for ever; but on shewing a Precedent in a Cause between Dighton and Ellis, Mich. 12 Geo. I. *Borret*, where a Trial was respited from Michaelmas to Easter Term, and on the Serjeant's urging the Necessity of the Case, the Court granted a Rule to shew Cause this Term, why the Trial should not be respited till Michaelmas Term, and now a Rule was granted accordingly to respite the Trial till Michaelmas Term, but at the Peril

Trial not respited above one Term.

Post. Strafford v. Marshal, East. 1735.

Cases of Practice in the

Trin. 2 G. II. Peril of paying Costs, if the Defendant then desired further Time.

Randolph *versus* Reginder.

Foley.

*S. C. Pract.
Reg. Com. Pl.*

357.

To set aside an Inquiry because the Jury had given more Interest than was due.
Ante 42.

* Page 46

A Motion to set aside an Inquisition, because the Jury had given more for Interest than was due, viz. the Note was given for Payment of Money a Month after Date, and the Jury gave Interest from the Date, and until the Execution of the Inquiry, whereas Interest ought only to be given from the Expiration of the Month to the Commencement of the Suit. The Court denied the Motion, but * ordered the Plaintiff (he consenting thereto) to remit so much as was taken more than ought to have been allowed.

Note; *Pumville versus Willet, Mich. 1733.* Borret, the like Rule was made by the Court.

Smith *versus* Dobby.

In Assault *1 s. Foley.*
brought into Court.

Tuny v.

Clarke, Mich.

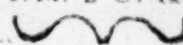
4 Geo. II.

Spring v. Bilson, Hil. 6

Geo. II.

AN Action of Assault and for taking away *1 s.* Moved to bring the Shilling into Court, and Plaintiff to proceed at his Peril for the Residue; and a Rule made to shew Cause; but Quære, Whether

Court of Common Pleas.

Whether it was ever made absolute, *Trin. 2 G. II.*
or opposed? 

Harris *versus* Allen.

Foley.

AN Action of Trespass for the mean Profits, brought pending a Writ of Error on the Ejectment; it was moved by the Defendant that Proceedings might be staid; the Court said this Case was within the Reason of the Rule which is constantly granted where an Action of Debt is brought on a Judgment, pending a Writ of Error, and therefore made a Rule that the Plaintiff might proceed to ascertain his Damages, and to sign his Judgment, but that Execution thereon should be staid till the Writ of Error on the Judgment was determined.

Action for the
mesne Profits
pending a
Writ of Error.

Sedgwick & al' *versus* Richardson.

Cooke.

MOTION to set aside a Judgment, because the Plaintiff had not delivered a Replication in Form, and given a Rule to rejoin; but it appearing that the Defendant's Attorney had agreed to take the Issue as delivered, the Court held he thereby waived the Form

Accepting of
Issue waives
the Form of a
Replication
and Rule.
Post. Fox v.
Lewing, East.
1730.

Cases of Practice in the

Trin. 2 G. II. Form of the Replication and Rule, and therefore they discharged the Rule which had been granted to shew Cause.

* Page 47

* Jones *versus* Merriden.

Foley.

Plaintiff entering the Defendant's Appearance the Day after the Appearance Day, is regular.

Stat. 12 G. I. c. 29. but now see *Charlton v. Hankey, Mich. 1733.* & *Stat. 5 G. II. cap. 27.*

UPON a Motion to set aside a Judgment, both Plaintiff and Defendant having entered an Appearance for the Defendant, the Court declared that the Plaintiff might enter the Appearance for the Defendant the Day after the Appearance Day of the Return of the Writ; the Defendant did not enter his Appearance till the Day after that Day, and therefore the Plaintiff's Judgment was held regular.

Note; In *Easter Term 2 Geo. II.* *Cooke*, the same Point came in Question in a Cause *Bannister versus Swinburne*, and was determined accordingly.

Higginson *vid. versus* Umfreville.

The Privilege of a Clerk in the Exchequer allowed.

Ante 2.
22 H. 6. 19b.
Brooks Abr. 29.
Lutwich 46.
Rastal 475.
&c.
2 Bul. 36.
2 Salk. 546.

MR. Baron Comyns attended and produced the Red-Book of the Exchequer, and by Virtue of a Clause therein demanded the Privilege of that Court for the Defendant, as being one of the Clerks of Mr. Pearce an Attorney of that Court; a Rule to shew Cause had been granted, but no Cause being

Court of Common Pleas.

being now shewn, Mr. Serjeant Hawkins cited many Cases for the Defendant, as did also the two Justices then in Court, viz Price and Denton; the Rule was made absolute and Privilege allowed.

Mich. 2 G. II.

Walker & al' *versus* Packer.

Cooke.

A Motion for Costs against a Pauper for not proceeding to Trial, and on Debate the Court ordered Costs to be taxed, and declared that a Pauper should pay Costs for all Defaults, as an Executor or Administrator should for their own Defaults.

S. C. Pract.

Reg. C. P.

405.

Costs against a Pauper for not proceeding to Trial.

Ante 14, 15.

* *Tames v. Gosey. Mich. 2 Geo. II.* * Page 48

Cooke.

ON a Motion for Liberty to tender Money into Court, upon some of the Promises in the Declaration, and to demur to one of the Promises, a Rule Nisi was granted; but on hearing Counsel on both Sides, the Court declared, that a Tender of Money was in order to make an End of the Cause, and not to delay it, and therefore discharged the Rule to shew Cause.

No Demurrer to Part where there is a Tender of Money into Court.

Double Plea denied.

G

Coant

Cases of Practice in the

Micb. 2 G. II.

Coant *versus* Keate.

Cooke.

No Impar-
lance, tho'
Plaintiff de-
clared on se-
veral Batta-
ries, tho' but
one in the
Writ.

A Motion for Imparlance in Battery, because the Special Writ mentioned but one Battery, and several Batteries were set forth in the Declaration; but denied, because the Special Writ in Battery never mentions but one Battery; and so it is in Covenant, tho' many Breaches are assigned in the Declaration.

Mr. Serjeant *Baynes* for the Defendant.
Whitaker for the Plaintiff.

Gerry *versus* Shilston.

Cooke.

Countermand
in London of
a Devonshire
Cause held
good.
Post. *Good-*
right v. Hob-
lyn, Trin. 8
Es' 9 Geo. II.

IN an Action laid in the County of Devon, a Rule was granted for Costs for not going to Trial, upon an Affidavit that Notice of Trial had been given, but no Countermand served. The Plaintiff produced an Affidavit that Notice had been countermanded in due Time in London; and on Debate, this was held good, tho' it was urged on the Defendant's Behalf, that the Declarations for a Countermand must come from the Country, and ought most properly to be given there; and that the allowing Countermands to be served

Court of Common Pleas.

served in London gave an Opportunity *Mich. 2 G. II.*
to Plaintiffs to exercise the most noto-
rious Persecutions; for by the Defen-
dant's Affidavit it appeared that the
Plaintiff, both before and after the
Beginning of the Assizes for the Coun-
ty of Devon, frequently told the De-
fendant that he intended to proceed to
Trial; and notwithstanding it was im-
possible for the Defendant to receive
timely Notice of the Countermand *
in Devonshire, so as to prevent his
Witnesses going to the Assizes, yet the
Court were of Opinion that the Coun-
termmand given in Town was good,
and that any Proceeding to Trial af-
ter would have been discharged.

And so it was said to have been set-
tled in a Cause laid in Yorkshire, be-
tween Shipley and Sweeting, Trin. 13 G. I.
Foley.

Barker versus Hartley, vid'.

Cooke.

A Motion to set aside a Judgment
signed for want of a Plea; a Plea
had been left in the Office, in the Body
of which the Plaintiff's Christian
Name was mistaken, by putting Ed'rus
for Ed'us, for which Mistake the Judg-
ment was signed; but the Court on
hearing

A Judgment
set aside, tho'
the Christian
Name of the
Plaintiff was
mistaken in
the Plea and
the Plea in the
Office.

Cases of Practice in the

Mich. 2 G. II. hearing Counsel on both Sides, declared that tho' the Christian Name was mistaken, it was a Plea in the Cause, and therefore set aside the Judgment, and said the Plaintiff might think it was well he escaped without paying of Costs.

Note; This was a Plea of *Plene Admissavit*, and it was insisted that if that Part of the Plea, wherein the Plaintiff's Christian Name was mistaken, had been left out, it would notwithstanding have been a good Plea, so that the naming the Plaintiff there was immaterial; but the Plaintiff's Name was again mistaken in a material Part, altho' of that no Notice was taken.

Parke versus Davis.

Foley.

Costs in an
Action of
Trespas,
Damages 1 s.
*Stat. 22 &
23 Car. II.
c. 9.*
*Post. Carru-
thers v. Lamb,
Mich. 1734.
Tomlinson v.
White, East.
1730.
Rofiter v.
Bölting.
Ante 24.*

AN Action of Trespas for breaking a Water-pail: a Verdict for the Plaintiff and 1 s. Damage; the Question was, Whether the Plaintiff should have his full Costs? The Court held, that this being an Injury to the Plaintiff's Personal Property, is not an Action within the Statute; and there is no Occasion for the Judge to certify, for no Freehold could come in Question; and it was said this Point had been often so ruled both here and in the King's Bench and Exchequer.

Note;

Court of Common Pleas.

Note; *Blackboyne versus Packer*, Trin. 2 Mich. 2 G. II. Geo. II. in an Action for killing a Goose, it was ruled accordingly, and full Costs allowed.

* *Morris versus Parry*.

*Page 50

Foley.

A Motion to set aside Judgment, upon Affidavit that the Plaintiff, tho' he knew the Defendant's Attorney, had delivered the Declaration, and also a Notice thereof, to the Defendant himself; but it appeared that the Plaintiff did not know the Defendant's Attorney, till after the Plaintiff had entered an Appearance for the Defendant; the Court were of Opinion, that the Plaintiff was not obliged to give any further Notice besides what had been given to the Party, and so the Judgment was confirmed; and tho' it appeared that the Plaintiff did not exactly pursue the (a) Rule of this Court, but delivered a Copy of the Declaration with Notice thereof to the Defendant, yet the Court said that the Delivery of the Declaration to the Defendant, and at the same Time giving him Notice thereof, was a complying with the Rule of Court in an Equitable Construction.

Where the Appearance is entered by the Plaintiff for the Defendant, Notice of the Declaration may be given to the Defendant himself.

(a) By the Rule of Court Mich. 1 G. II. the Declaration should have been left in the Office, and Notice thereof given to the Defendant.

Post. *Thomas v. Busbell*,

Hil. 6 Geo. II. *Hutching v. Lillyman*, Hil. 9 Geo. II.

Cases of Practice in the

Mich. 2 G. II. Note; *Canter versus Jockham, Hil. 5 Geo. II. Foley, and Shrigley versus Mather, Mich. 1733.* in the like Cases the Court ruled this Point accordingly.

Harding *versus* Avery.

S. C. Pract. Foley.

Reg. C.P. 186.

Judgment
signed after
Return of
Writ of Error
held good.

Duffield v.

Warden, East.

5 Geo. II.

Griffin v.

King, Trin.

2 & 3 G. II.

1 Sid. 318.

3 Keb. 309.

(a) *The Judgment, when
signed, hath
relation to the
Day in Bank;*

*so that a Writ
of Error re-
turnable after
in the same
Term, would
have removed
the Record.*

1 Mod. 212.

A Rule to shew Cause why a Ca' Sa' should not be discharged, and the Defendant set at Liberty, the Plaintiff having taken out Execution after a Writ of Error allowed. It appeared that the Plaintiff did not sign his Judgment till after the Return (a) of the Writ of Error; the Court, on hearing Counsel on both Sides, and the Matter fully debated, and many Cases cited, declared that the Plaintiff might sign his Judgment when he pleased; and if he thought fit to defer signing it till after the Return of the Writ of Error, he had Liberty to do so, and might then take out Execution, notwithstanding the Writ of Error, in regard the Writ of Error, if returnable before Judgment signed, does not attach upon the Suit; and therefore the Court discharged the Rule to shew Cause.

Note; *Chivers versus Willan, Trin. 3 & 4 Geo. II. Cooke,* in the same Point, the Court determined accordingly.

Spencer

Court of Common Pleas.

* Spencer *versus* Le Royd.

Hil. 2 G. II.

* Page 51

Borret.

A Motion made the last Day of the Term for an Attachment for Non-payment of Costs, which the Court granted, but declared it was the settled Practice of the Court, that in no other Case a Motion could be made for an Attachment the last Day of any Term.

Rule for an Attachment made the last Day of the Term.

Richardson *versus* Sutton. Hil. 2
Geo. II. 1728.

Foley.

A Motion to set aside a Demurrer to a Declaration, where a Plea in Abatement had been pleaded to the Declaration, and that Plea demurred to; yet Mr. Serjeant—— had demurred to the Declaration, and to the Demurrer before pleaded to the Plea in Abatement; the Court resenting this Behaviour in the Serjeant, ordered the Ad-
against False Pleading to be read, made a Rule to set aside the Demurrer, and ordered the Serjeant to pay the Costs of the Motion.

False Plea set aside, and a Serjeant ordered to pay Costs.

Stat. 3 E. I. c. 29.

Cases of Practice in the

East. 2 G. II.

The King *versus* Gibbon.

On Attachment Defendant may move to be discharged, if Interrogatories be not filed.

ON an Attachment for a Contempt, it was moved to estreat the Recognizance, because the Defendant had not appeared to answer Interrogatories. For the Defendant it was alleged, that the Interrogatories had not been filed in due Time for his Examination; the Court declared that the Defendant ought to have moved to be discharged, if Interrogatories were not filed in four Days according to the Rule; but he not having applied for that Purpose, the Court ordered that he should answer the Interrogatories in a Week, or the Recognizance should be estreated.

*Page 52 Griffith *versus* Berney & ux'. *East.*
2 Geo. II. 1729.

A married Woman rendered with her Husband in Discharge of Bail.

IT was moved to discharge the Defendant's Wife after a Render in Discharge of Bail; Mr. Serjeant COMYNS for the Defendants cited many Cases; Mr. Serjeant Eyre for the Plaintiff insisted, that the very Recognizance itself imported that if the Defendants should be condemned, the Bail should pay the Condemnation Money.

Court of Common Pleas.

Money, or render the Bodies to the Fleet, so that the Defendants being continued in Custody, was agreeable to the Recognizance and the Defendants own Consent. On the Debate the Court seemed to be of Opinion, that a married Woman might be taken with her Husband on mesne Process, if the Debt was contracted dum sola, that the Render in this Case was good, and that the Defendant's Wife could not be discharged; for if it was otherwise, a Woman in Custody, or that was indebted, might marry a Prisoner, and then if this Practice took Effect, she would be intitled to a Discharge, and her Creditors might be defrauded; sed Advifari.

Note; This Matter was afterwards compromised, and the Defendant and his Wife were both discharged on bringing Money into Court.

Walter *versus* Okeden.

Cooke.

A Motion was made last Term to amend a Fine, by inserting the Word Woorth, and this present Term on shewing Cause, the Rule was made absolute for the Amendment, tho' it was objected that the Heirs at Law would be prejudiced, if the Fine was amended;

A Fine amended.

Cases of Practice in the

East. 2 G. II. amended; the Court said they could
Ante 9. 17, not take Notice whether it would be a
25, 26, 30, Prejudice to the Heirs at Law or not,
Post. Foster v. but it was the Duty of the Court to
Pollington & make the Fine agreeable to the Deed
xx', Trin. 8 and Intention of the Parties. *Mr.*
& 9 Geo. II. Serjeant Belfield pro Quer'; Cheshire &
 al' pro Hæred'.

*Page 53

* Dalton *versus* Teasdale.

Foley.

Motion to set
 aside a Judg-
 ment on a
Sci' fac' a-
 gainst Bail in
 York, the O-
 riginal Action
 being brought
 there, but the
 Bail recorded
 at *Westminster*.
Ante Cock v.
Green, Mich.
13 Geo. I.

A Capias issued into York, a Testatum
 Capias into Middlesex, and a Scire
 facias against Bail in York, and Judg-
 ment thereon, and Testatum Execution
 in Middlesex; and now the Court was
 moved to set aside the Judgment, be-
 cause the Scire facias against Bail ought
 to be where the Bail or Recognizance
 is entered on Record; and in this Case
 the Scire facias issued into York, where-
 as it ought to have issued into Middle-
 sex, the Bail being recorded at West-
 minster: Sed Cur' Advisare.

Harvey *versus* Weston.

Foley.

Non-pros set
 aside, because
 signed in a
 wrong Office.

A Motion to set aside a Non-pros
 signed in *Mr. Foley's* Office for
 want of a Declaration; it appeared that
 the Plaintiff's Attorney practised in *Mr.*
Prothono-

Court of Common Pleas.

Prothonotary Cook's Office, and therefore the Rule and Non-pros ought to be in that Office; and on hearing Counsel on both Sides, the Non-pros was set aside. Sed quære; for since the Defendant's Attorney must call on the Plaintiff's Attorney for a Declaration in Writing before he can sign a Non-pros, it seems indifferent in what Office the Rule is given; and the generally received Opinion is, that it may be given in any Office; and so likewise the Practice now seems to be.

*Trin. 2 & 3
Geo. II.*

Vanderesh & al' versus Waylet.

Trin. 2 & 3 Geo. II. 1729.

Render after
Rising of the
Court void.

*1 Rol. Abr.
334.
Salk. 101.
Regula Mich.
1654. sec. 12.
See Ante
Wright v.
Duxon, 18.
Wright v.
Dingley, 23.
Post. Gawinner
v. Proctor, 58.
Knight v.
Winter, Mich.
1735.
Ling v. Wood-
yer, Hil. 1735.*

A Motion to set aside a Render made after the Rising of the Court; it was declared to be the Opinion of this Court and of the Court of King's Bench, and settled as Law, that no Render was good unless made before the Rising of the Court on the Appearance Day of the Scire facias returned Scire feci, or of the second Scire facias returned Nihil; and so all Arrests made, and Process served, after the Rising of the Court on the Return-Day, are irregular.

* Note; *Bacon versus Bruce*, *Trin. 7 & 8 Geo. II. Thomson*, it was likewise held, that a Render after the Rising of the Court

* Page 54

Cases of Practice in the

Trin. 2 & 3 Geo. II. Court upon the last Day allowed for rendering the Defendant was void.

Griffin *versus* King.

Cooke.

Execution set aside, tho' the Judgment was signed after the Writ of Error expired.

Ante Harding v. Avery, Mich. 2 G. II. Post. Duffield v. Warden, East. 5 G. II.

A Motion to set aside an Execution which was executed after a Writ of Error allowed; the Case was, The Defendant had confessed a Judgment by Cognovit Dampna, and the Plaintiff's Attorney promised to sign it the 31st of May, which was the Day before the Effoin-Day of this Term; but the Plaintiff's Attorney deferred signing his Judgment till after the Return of the Writ of Error was expired, and then took out his Execution; which the Court said would have been regular, if he had not consented to sign Judgment at the Time abovementioned; but seeing he had acted this Part contrary to his own Agreement, they ordered the Execution to be set aside, and Restitution made, and likewise ordered the Plaintiff's Attorney to sue out a new Writ of Error at his own Costs.

Rathbone

Court of Common Pleas.

Mich 3 G. II.

Rathbone *versus* Stedman.

Borret.

Sixty-three Shillings being brought into Court upon the Common Rule, and Verdict for the Defendant, upon Motion in the Treasury, and hearing the Attornies on both Sides, it was ordered that the Defendant should have the Money out of Court in Part of his Costs.

Money in Court, and Verdict for Defendant.
Post. Maddox v. Passon, East. 8 G. II. Ante Anon. 5. Lane v. Wilkinson, Trin. 13 Geo. I.

Broome *v.* Woodward and others.

Mich. 3 Geo. II. 1729.

Cooke.

A Motion to set aside a Judgment signed the next Morning after the Rule to plead was out, the Plea was called for in Writing two Days before the Rule was out; the Court said the Plaintiff's Attorney might call for a Plea instantly upon the Rule being given; but it is the standing Rule of the Court not to sign Judgment or Non-pros, till * the opening of the Office in the Afternoon after the Rule to plead is out, and for that Reason they set the Judgment aside.

Judgment set aside because the Plaintiff did not stay till the opening of the Office the Afternoon after the Rule was out.

* Page 55

Buckmaster & Troughton, 17. Heme v. Chapman, Mich. 5

Joy Geo. II.

Cases of Practice in the

Mich. 3 G. II.

Joy versus Francia.

Cooke.

*S. C. Pract.
Reg. C P. 146.
Judgment
good where
Declaration is
filed de bene
esse; Notice
thereof given
to the Defen-
dant, without
calling on the
Defendant's
Attorney for a
Plea.*

*Vide Stat. 12
Geo. I. c. 29.
Reg. Mich. 3
Geo II. reg. 2.
Ante Turner v.
Shrimpton, 32.*

A Motion to set aside a Judgment, because the Plaintiff's Attorney did not give the Defendant's Attorney Notice of the Declaration, nor call on him for a Plea; but the Court held that the Judgment was good, for where the Plaintiff enters the Declaration de bene esse, he cannot know the Defendant's Attorney, till Bail put in or Appearance entered; and Notice to the Defendant of the Declaration and of the Time of pleading is sufficient.

Note; *Peed versus Chamberlain, Mich. 6 Geo. II. Cooke*, the Court made the like Determination in regard to this Point.

Busby versus Walker.

Foley.

*Exceptions
against Bail to
be either on
the Bail-piece
or the Book.
Ante Rayner
v. Stamp,
Hil. 13 Geo. I.*

UPON a Motion to stay Proceedings on the Bail-Bond, the Court declared it should be a standing Rule of Practice, that in all Cases of Exception to Bail, such Exception should be made either in the Filazer's Book, or on the Bail-piece with the Commissioner, before it is transmitted, and afterwards above in the Filazer's Book, or on the Bail-piece.

Taylor

Court of Common Pleas.

Hil. 3 G. II.

Taylor v. Blaxland & al' Repleg'.

Foley.

THE Court was of Opinion that Notice ought to be given in Replevin of the filing the Re. fa. lo. if brought in after the four Days, and that a Declaration ought to be called for in Writing, and therefore set aside the Return' Habend', which had been issued in this Cause without such Notice.

Note; *Coleman versus Poynter, Easter 4 Geo. II. Foley*, the like Resolution by the Court.

S. C. Pract. Reg. C.P. 37c.
Notice of filing the Re. fa. lo. if brought in after the four Days.

* Breedon v. Hope. Hil. 3 Geo. II. * Page 56

Borret.

Lond. ff. **I**N this Case, the Writ was returnable the second Return of this Term, Declaration delivered de bene esse upon the Effoin-Day of the Return being in full Term, and a Rule to plead given. Upon a Motion in the Treasury for an Impar-
lance it was denied, because the Declaration was delivered according to the (a) last Rule for pleading in four Days.

No Impar-
lance on a De-
claration deli-
vered on the
second Return
of Hillary
Term.
(a) *Reg. Mich.*
3 Geo. II.
and see *Reg.*
Pasc. 3 G. II.

Fox

Cases of Practice in the

East. 3 G. II.

Fox & al' v. Lewing. *East. 3 G. II.*

*S. C. Pract.
Reg C.P. 227.
Motion to stay
Judgment up-
on Nul tiel
Record with-
out Rejoinder
in Form, de-
nied.*

*Ante Sedg-
wick v. Ri-
chardson, Trin.
2 Geo. II.*

*Lutwich
1514.
Brownlow
433.
Dyer 228.
pl. 45.*

UPON a Motion to stay Judgment after a Replication of Nul tiel Record, the Plaintiff insisted that Judgment ought not to be given for that there had not been a Rejoinder in Form, quod habetur tale Recordum; Mr. Serjeant Hawkins said it might possibly be the Practice of the King's Bench, to give Judgment without such Rejoinder, but insisted that it was not the Method or Practice of this Court: The Chief Justice declared he thought it reasonable to give Judgment upon such a Replication without any Rejoinder, whatever the Practice might be; and the Rule was enlarged till next Term to have this Point settled. And it was then insisted to have been the constant Practice of this Court to add a Rejoinder, and that it was no compleat Issue without it; but the Court were of another Opinion, and declared that the Issue was compleat without any Rejoinder.

Note; *Newberry* versus *Sedgwick*, *Easter 1736. Thompson*, in the like Case the Court determined agreeably to the above Resolution.

Court of Common Pleas.

Trin. 3 G. II.

* *Cole v. Pinnell. Trin. 3 Geo. II.*

* Page 57

Foley.

A Motion for an Imparllance till Michaelmas Term next, because the Declaration was delivered last Michaelmas Term, and no Plea called for in three Terms, according to the Rule Mich. 1654. which was ordered by the Court accordingly.

Li. lo. because no Plea called for in three Terms.

Reg. Mich. 1654. sec. 15.

Thompson v. Smith, ex dimiss. Samuel Warner, Esq;

Coke.

IN Ejectment, a Rule to shew Cause why Proceedings should not stay till the Lessor, being Lord of the Manor, should deliver the Defendant a Copy of the Court-Roll of his Admission to the Copyhold Lands of Inheritance in Question, which was detained for Nonpayment of the Fine. The Court were of Opinion, that the Defendant had a Right to the Admission, and might not be able to defend himself without it, and therefore the Lessor ought to deliver it, he having another Remedy for his Fine, for the Lands will be forfeited for Nonpayment thereof.

Proceedings stayed till the Lord of the Manor delivered the Defendant Admission.

H

Sabor

Cases of Practice in the

Mich. 4 G. II.

Time to plead
denied, unless
Consent not
to move to
change the
Venue.

See the next
Case and the
Cases there
cited.

Sabor versus Pott.

Borret.

ON a Motion for Time to plead, the Court refused to grant Time, but on Terms that the Defendant should consent not to move the Court to change the Venue.

Treasure v. Wright. Mich. 4 G. II.

Cooke.

See the pre-
ceding Case,
and *Carter &
Dormer, Hil.
13 Geo. I.
Post. Costar
v. Standen,
Hil. 8 Geo. II.
Ball v. Young,
Hil. 9 Geo. II.*

* Page 58

But see also
*Lucas v. Rudd,
Mich. 10 G. II.*

ON a Motion for Time to plead, it being represented on the Behalf of the Plaintiff, that the Defendant intended to move to change the Venue, which would be a great Delay to the Plaintiff; the Court said they would not encourage Motions to change the Venue after Time to plead * had been given, and therefore would not give Time to plead, unless the Defendant would consent not to move to change the Venue.

Court of Common Pleas.

Mich. 4 G. II.

Griffith, Administrator of Griffith,
versus Squire.

Cooke.

A Motion was made to tax the Intestate's Bill of Costs, the Action being brought for Fees and Charges due to the Intestate, who was an Attorney; but the Motion was denied, and it was likewise held that the Administrator of an Attorney might commence a Suit without delivering any Bill.

Comb. 348.
Ante Clarke
v. Godfrey, 27.
Post. Marsh
v. Carter,
Mich. 8 G. II.

And Note; *Lee, Executor*, against *Knight*, *Mich. 6 Geo. II.* *Cooke*, the like Motion was made and denied. See *Notes Pract. C. Pleas 89.*

Holmes versus Small, and in three other Causes.

Cooke.

A Motion to set aside the Proceedings, because it was alledged the Declarations were delivered as Declarations by the By, and for that they ought not to declare by the By, till the Plaintiff had declared in the Original Action. Cur': If the Writ had been Special it must have been so; but here the Writ is an Acetiam only, and so the Plaintiffs by declaring will only

S. C. Pract.
Reg. C.P. 137.
Concerning
Declaring by
the By.
Ante Me-
thuin v.
Pople, 6.

Cases of Practice in the

Mich. 4 G. II. lose the Bail, but may declare in any Action or any County, as they might upon a *Clausum fregit*, and deliver as many Declarations the same Term between the same Parties as they will.

Gwinnell *versus* Procter.

Foley.

S. C. Pract.
Reg. C.P. 73.
Render not
good till Bail
be perfected.
Post. Ling v.
Woodyer, Hil.
9 Geo. II.
Vandereft v.
Waylet 53.

* Page 59

A Motion to discharge Mr. Justice Price's Summons to stay Proceedings on a Bail-Bond, on a Suggestion that the Defendant had surrendered himself in Discharge of his Bail; it appeared that Exception was taken to the Bail, and that the Render was made before Justification, so that the same was irregular, and did not warrant the Suggestion in the Summons; wherefore the Court set the same aside.

* Note; *Cremar* against *Bulman, Hil. 8 Geo. II.* the same Point was resolved accordingly by the Court. *Notes Pract. 56.*

Tuney *versus* Clarke.

Tender of a
Note into
Court upon an
Action of
Trove.

Smith v. Deb-
by, Trin. 2.
Geo. II.
Spring v. Bil-
son, Hil. 6
Geo. II.

Cooke.

IN Trover, the Defendant moved to bring a Note into Court; Mr. Serjeant Darnell declared he had moved for and obtained a Rule, to bring into Court two Fowls in one Term, and the next Term a Spare-rib of Pork

or

Court of Common Pleas.

or Money in Lieu thereof; Mr. Secretary Thomson remembered a Motion to bring in a Bill in Trover, and several other Instances were given: The Court thought it as reasonable that Goods, or their Value, should be brought into Court in an Action of Trover, as Money in an Assumpsit, and made a Rule accordingly.

Mich. 4 G. II.

Note; *Billings* against *Wilcocks*, Hil. 1733. *Cooke*, a Rule was granted for bringing Work-Tools into Court.

Poulter versus Skynner.

Foley.

UPON a Motion to set aside a Judgment, it appeared that the Defendant was served with Process in London, at which Time he lodged in London; and Notice of a Declaration being filed against him was likewise left at his Lodging in London, as his last Place of Abode, with Directions therein to plead within four Days, tho' his most usual Place of Abode was at Dorchester where he had a House, which being twenty Miles from London, it was insisted upon that he should have had eight Days Time to plead by the (a) Rules of the Court; and also that the Notice should have been left at the

S. C. Praet. Reg. C.P. 129.
Judgment good, tho' the Defendant's most usual Abode was above 20 Miles from London, Process being served and Notice of the Declaration given at his Lodgings in London.

(a) *Mich. 1 Geo. II. Mich. 3 G. II. & East. 3*

H 3

Defen-

Geo. II. Post. Whitehead v. Goodyer, East. 5 Geo. II.

Cases of Practice in the

Mich. 4 G. II. Defendant's House in the Country, he only being in London for a short Time upon Business; but the Court held that the Process having been served upon the Defendant in London, and the Notice of the Declaration delivered in London, while he resided there, such Delivery was sufficient, and that the Defendant had only four Days Time to plead.

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* Duell qui tam *versus* Stow.

Cooke.

*S. C. Praet.
Reg. C. P. 406.
Costs tho' Ne
recipiatur en-
tered.*

*Reg. Cur' Pas.
1 Jac. II.
Hil. 8 Geo. I.
Reg. 2.*

UPON a Question whether Costs should be allowed to the Defendant, on account of the Plaintiff's not proceeding to Trial in Middlesex; it appeared the Defendant had entered a *Ne recipiatur* the Evening next but one before the Day of Sitting; and it was therefore insisted that the Plaintiff was not to pay any Costs, since the Defendant himself by entering the *Ne recipiatur* was the Occasion why the Cause was not tried; but per Cur' the Default was in the Plaintiff's not entering his Cause in due Time, and therefore he shall pay Costs notwithstanding the *Ne recipiatur* entered by the Defendant.

Garden

Court of Common Pleas.

Mich. 4 G. II.

Garden *versus* Sheers, an Attorney.

Cooke.

A Motion to discharge the Defendant upon an Affidavit, that he (as an Attorney) was going to Westminster to attend justifying Bail, and had given Notice to the Plaintiff's Attorney and Filazer to attend; but this did not appear plainly; and therefore, tho' the Court will protect any Person Eundo & Redeundo, yet they will not regard every Pretence.

The Defendant, an Attorney, moved to be discharged out of Execution, being taken as he was going to attend the Court, but denied.

Post. *Griffith v. Brown*,

East. 4 Geo. II. Morley v. Grub, Trin. 7 & 8 Geo. II. Piggot v. Charwood, Trin. 1734. Newman & Harrison, East. 10 Geo. II.

Ellison *versus* Kirby.

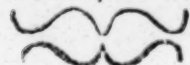
Foley.

A Motion and Rule made to tax the Plaintiff's Bill of Costs, which was taxed Ex parte after several Attendances; but at last it appearing to the Court that the Plaintiff had not signed his Bill, the Court declared that a Bill not signed was not to be taxed by Virtue of the late Act of 2 Geo. II. cap. 23. for the Regulation of Attornies and Solicitors, and discharged the Rule and the Proceedings which had been had thereon.

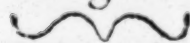
Bill not signed not liable to be sued for, or taxed. Ante 27. *Griffith v. Squire*, 58.

Cases of Practice in the

Mich. 4 G. II.



* Page 61



Outlawry in
the same
County held
good.

*Post. Norton v.
Gilbert, Mich.
1732.*

Hains v.

*Bowler, East.
13 Geo. I.*

*Banco Regis,
& Lamphere
v. Wyersdale,
in the same
Court.*

*Calvert & al'
v. Burnford,
Mich. 9 Geo.
I. Cooke.*

* *Hayes versus Longbotham.*

A Motion that the Plaintiff should reverse an Outlawry at his own Expence, for that the Defendant being visible, and daily to be arrested or served with Process, (of which Affidavits were made,) and living in London was outlawed there; the Motion was after great Debate denied: But the Court said, if the Defendant had been outlawed in another County they would have ordered the Plaintiff to reverse the Outlawry and pay Costs: Sed Quære; for the Writ of Proclamation, which by the Stat. 31 El. c. 3. must be awarded to the Sheriff of the County where the Defendant dwelt at the Time of the Exigent, was intended to remedy any Surprize of this Sort upon the Defendant. Mr. Serjeant Corbet cited several Cases in the King's Bench, where Persons being outlawed, tho' in the same County, yet it appearing that they were visible, and easy to be arrested or served with Process, the Plaintiffs were ordered to pay Costs and reverse the Outlawry at their own Expence.

Hamly

Court of Common Pleas.

Mich. 4 G. II.

Hamly *versus* Dowharty.

Borret.

IT was declared by the Court to have been the constant Practice, that no Exception could be taken to the Bail which had been taken by the Sheriff, but the Plaintiff may proceed against the Sheriff to make him return his Writ and bring in the Body, and the Court will then compel the Sheriff to put in good Bail, as they did *Mr. Benson* in the Case of *Hampson versus Sower*, *East. 2 Geo. II. Foley.*

Note; The Practice is now altered by a general Rule made *Mich. 6 Geo. II. Reg. 2.* and Exception may now be taken against such Bail.

Exception to Bail, tho' the same were taken by the Sheriff.

Atkins, Administrator of Bassett,
v. Spence. Intr. Trin. 3 & 4
Geo. II. Rot. 1421.

Foley.

TROVER brought by an Administrator where the Trover was in the Intestate's Time, and the Conversion in the Administrator's; and the Plaintiff being nonsuited at the Assizes, the Question was, Whether the Plaintiff

S. C. Pract. Reg. C.P. 115.
Costs on a Nonsuit against an Administrator.

Cases of Practice in the

Mich. 4 G. II. tiff should pay Costs on a Nonsuit?
 Cur' inclined to * think that if the Ac-
 tion might have been brought by the
 Administrator in his own Right, he
 should pay Costs, but not otherwise:
 Sed advisari; and the Postea was order-
 ed to stay. Afterwards in the same
 Term the Court ordered the Plaintiff
 should pay Costs, for that the Action
 might have been brought in his own
 Right.

Salk. 314.

Worfield v.

Worfield.

Latch 220.

Shafto v.

Coatsworth.

Ante 14.

Lamley v.

Nichols. Post. Hayden v. Norton, Mich. 6 Geo. II.

Ascough & al' v. Lady Chaplin.

Borret.

*Breve de Ven-
tre inspiciendo.*

See Officina

Brev. 409.

East. 39 El.

rot. 1250.

Moor 523.

Bract. lib. 2.

fo. 69

Cre. Jac. 685.

A Writ de Ventre inspiciendo returna-
 ble Tres Mich. on the Behalf of Ed-
 ward Ascough, Esq; and Elizabeth his
 Wife, Anne Chaplin Spinster, Charles
 Fitzwilliams and Frances his Wife, Co-
 heirs of Sir John Chaplin, Bart. their
 Brother, against Dame Elizabeth Chap-
 lin, Widow of the said Sir John; the
 Writ was returned that the Lady was
 with Child, and a Motion made for the
 safe Custody of her until her Delivery;
 it was suggested that the Lady's Mo-
 ther was likewise with Child, and there-
 fore neither she nor any other Woman
 with Child were proper Persons to be
 with her; the Court agreed that such
 a

Court of Common Pleas.

a Clause should be inserted in the *East. 4 G. II.*
Writ, and Ladies were named on the
Part of the Prosecutors or Heiresses,
to attend the Lady during her Preg-
nancy and till her Delivery, but they
must not name any Spinster; and the
Mother was allowed to visit only.

Higgins v. Stuart. *Hil. 4 Geo. II.*

Foley.

IT was held by the Court, that No-
tice of Trial or Inquiry must be de-
livered to the Defendant, where the
Attorney is not known or not to be met
with.

S. C. Pract.

Reg. C.P. 275.

396, 442.

Notice of
Trial or In-
quiry, the At-
torney is not
known.

Ante 55. Joy v. Francia.

* The Principal, Fellows and Scho-
lars of Jesus College in Oxford,
v. Vaughan. *East. 4 Geo. II.* *Page 63

Cooke.

IN Quare Impedit, the Plaintiffs were
non-suited at the Assizes for Surry, and
now on their moving for a new Trial,
the Defendant opposed the Motion, in-
sisting that the Plaintiffs being out of
Court

Motion for a

new Trial

where the

Plaintiffs were

non-suited.

Post. Williams

v. Jones,

East. 1734.

Jones v. Hergest, Mich. 1734. Swale v. Leaver, Mich. 1735.

Cases of Practice in the

East. 4 G. II. Court by the Nonsuit, the Court could not admit the Plaintiffs to move; but it was answered that the Question here was, If the Nonsuit was regularly obtained, and whether or no the Plaintiffs opened the Cause, and if that Objection should prevail, it would be exceptio ejusdem rei cujus petitur dissolutio; the Court ordered Proceedings to be staid till Mr. Justice Probyn's Opinion should be asked; afterwards on his Certificate the Rule was discharged.

Parsons & al' *versus* Smith.

Borret.

Proceedings stayed, the Notice not being sufficient of the Declaration left in the Office.

(a) See the Form of the Notice *Pract. Reg. Com. Pleas* 131.

Post. *Seller & Faceby, Hil. 5 Geo. II. Taylor & Sharman, Trin. 1735.*

A Motion to stay Proceedings, because the Notice of the Declaration was not sufficient, it not appearing in what kind of Action the Declaration was, whether Debt or Case; the Court debated this Matter, and were of Opinion that if the Notice imported the Nature of the Action, it was not necessary to set forth the Substance of the Declaration at large therein; but the (a) Notice in this Case was only for 10 l. in which you are indebted for Work done, and on a *Quantum meruit*; and therefore it not appearing what the Nature of the Action was, since it might be an Action of Debt or Case, the

Court of Common Pleas.

the Court ordered the Proceedings *East. 4 G. II.*
should stay.

Note; There was the like Resolution in
a Cause, *Prior v. How*, this Term; and in
another Cause, *Highmore v. Tiffin*, *Hil. 5*
Geo. II.

Biddleston *versus* Atcherley.

Cooke.

IN this Cause a Motion was made to set
aside the Judgment, which had been
signed after a Plea in Abatement was
delivered; it appeared that the Decla-
ration was * delivered the Eighth of
February, and the Plea in Abatement
not delivered till the Fourteenth of
February; and it was insisted on the
Part of the Plaintiffs, that this Plea
in Abatement was pleaded after the
Time limited by the Rules of the Court,
and was therefore irregular, for that it
ought to have been pleaded within four
Days after the Declaration delivered
or left in the Office, and could not af-
terwards be pleaded; of which Opinion
was the Court; and therefore the Mo-
tion was denied, and the Resolution in
the Anonymous Case in Easter Term 8
Geo. I. was established, where it is held
that such Plea is void if not delivered
within four Days after Declaration
delivered, or Notice of Declaration
served,

S. C. Pract.
Reg. C P. 286.

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To plead in
Abatement
within four
Days after
Declaration
delivered or
left in the Of-
fice.

Ante 23.

Cases of Practice in the

East. 4 G. II. served, even tho' no Rule to plead were given.

Griffith *versus* Brown.

Borret.

An Attorney
in Execution
discharged,
being attend-
ing on Motion.
Ante 60.
Garden v.
Sheers.
Post. Newman
& Harrison,
East. 10 G. II.
Piggot v.
Charlwood, Trin. 1734.

A Motion on the Petition of Mr. Harrison an Attorney, to be discharged, being taken in Execution at the Suit of Mr. Hoyle; it appeared he was taken at the Exchequer Coffee-House near Westminster-Hall, while he was attending on a Motion in this Court; and for that Reason the Court discharged him.

Morley v. Grub, Trin. 1734.

Taylor *versus* Fuller.

S. C. Praes.
Reg. C. P. 34.
Where a Bill
need not be
filed against
an Attorney.
Ante 43.
May v.
Constable,
Mich. 1654.
set. 1.
See Reg. Cur'
Mich. 6 G. II.
that no Attor-
ney shall be
Bail.

AN Attorney sued either as Execu-
tor or Administrator, or as Bail,
has no Privilege, but may be sued as
a common Person. And in the same
Term one Vaughan, an Attorney of this
Court and of the King's Bench, offered
to be Bail but was refused, there be-
ing a Rule against it made in Michael-
mas Term 1654. An Attorney of an-
other Court may be Bail, but then he
loses his Privilege, and so an Attor-
ney of this Court, where the Plaintiff
consents,

Court of Common Pleas.

consents, may also become Bail, but *Trin. 5 G. II.*
thereby he loses his Privilege.

* *Martin v. Sharopin. Trin. 5 G. II.* * Page 65

Borret.

THE Defendant was arrested and held to Special Bail, and moved to be discharged, having a Certificate from the Count de Broglio, the French Ambassador, of his being Master of the Horse; it appeared the Defendant was a Trader, and such a one as a Commission of Bankruptcy might have issued against; the Court discharged the Rule to shew Cause.

An Ambassador's Certificate produced, but rejected.

*Vide Stat. 7
Ann. cap. 12.*

*Geale v. Chapman. Intratur Hil.
3 Geo. II. Rot. 1471.*

Foley.

UPON the late Act for setting one Debt against another, a Motion that no Costs should be allowed for that there was no Verdict for the Defendant, only an Indorsement that 13 l. was due to the Plaintiff for Rent, but that on Ballancing the Accounts, there appeared due to the Defendant 13 s. the Court declared that the Indorsement on the Record was according to the Intent of the Act, and was a good Verdict

On a Verdict in Favour of Defendant on the Act for setting one Debt against another, he shall have Costs.

*Stat. 2 G. II.
c. 22. & 8
Geo. II. c. 24.*

Cases of Practice in the

Mich. 5 G. II. Verdict to intitle the Defendant to have his Costs as in other Cases, and also his Costs for maintaining and supporting his Verdict.

Holiday v. Scot. *Mich. 5 Geo. II.*

Borret.

A Plea to be called for in Writing, where an Attorney undertakes to appear for Defendant.

AN Attorney undertook to enter an Appearance for the Defendant and plead; the Court said they would compel him to enter the Appearance, but doubted whether the Plaintiff could sign Judgment without demanding a Plea in Writing; it was afterwards agreed that a Plea ought to be demanded in Writing.

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** Baker versus Miles.*

Borret.

Verdict set aside, and new Trial ordered, on Affidavit of the Jurymen.

A Motion to set aside a Verdict, and for a new Trial, upon an Affidavit of eleven of the Jury; wherein it was sworn that they had agreed on a Verdict for the Plaintiff and 5 s. Damages, but by Mistake the Foreman gave a Verdict for the Defendant: Per Cur', a new Trial upon Payment of Costs.

Edwards,

Court of Common Pleas.

Mich. 4 G. II.

Edwards, ex dimiss' Edwards, v.

The Earl of Warwick.

Cooke.

IN Ejectment, a Motion for a Trial at Bar the same Term, it being suggested that the Defendant would be intitled to Privilege the next Term; it was objected that it is not usual to be granted the same Term in which the Motion is made; but the Court doubted, and ordered Precedents to be searched for; the Earl afterwards appeared in Court, and agreed by Writing under his Hand to waive his Privilege, and thereupon a Rule was granted for a Trial at Bar the next Term.

Motion for a Trial at Bar the same Term that the Motion was made.

Buxom, ex dimiss. Pellow, *versus* Pellow.

Cooke.

IN this Cause the Question was, what Notice of Trial must be given on an Issue of above a Year's standing? It was settled that a Term's Notice must be given, and the Notice must be delivered before the Effoin-Day, otherwise not good.

A Term's Notice where Issue has been joined above a Year.

Reg. Cur' Mich. 1654.

sec. 21.

An'e 2.

Bower v.

Street. Post. Paul v. Gleadhill, Hil. 7 Geo. II. This Practice is settled by the Rule, East. 13 Geo. II. reg. 2.

Cases of Practice in the

Mich. 4 G. II.

Whitchurch v. Worthington, an
Attorney.

Foley.

Subscribing
Bill to appear
not good
without enter-
ing appear-
ance in the Re-
membrance.

*Page 67

THE Court held that, upon a Bill filed against an Attorney, the Subscribing the Bill was only an Undertaking to appear, and the Defendant ought likewise * to enter his Appearance in the Prothonotary's Remembrance, which, upon Application, the Court will oblige him to do.

Herne *versus* Chapman.

Borret.

S. C. Pract.
Reg. C. P. 287.
Time till such
a Day given
by a Judge to
plead includes
that whole
Day, and till
the opening of
the Office the
Afternoon of
the subsequent
Day.

Ante 17, 54.
Buckmaster v.
Troughton,
Brown v.
Woodward.

A Motion to set aside a Judgment signed the Morning next after the Day given by a Judge's Order for Time to plead; the Court were of Opinion, that the Day given by the Judge must be intended a whole Day, and that this was enlarging the Rule to plead one whole Day, and therefore the Plaintiff could not sign his Judgment till the opening of the Office in the Afternoon of the next Day after the Day given by the Judge was expired.

Note; *Taylor versus Slocham, Mich. 1733.*
Cooke, Time to plead was given till the first
Day

Court of Common Pleas.

Day of next Term, by a Judge's Order; *Mich. 4 G. II.*
and the Court were of the same Opinion as
above; and that no new Rule to plead was
in that Case necessary to be given. See
Notes Pract. 165.

Dale *versus* Careless & al'.

Borret.

A Motion to enlarge a Rule, but the Party not coming on the Day upon which the Rule was made to shew Cause, and having given no Notice of the Motion, the Court refused to enlarge the Rule till Notice of the Motion had been given; declaring that Notice ought always in such Case to be given.

Notice to be given of Motion to enlarge a Rule after the Day to shew Cause.

Robinson *versus* Simmonds.

Cooke.

UPON a Motion for Leave to withdraw a Special Plea, and to plead the General Issue; the Court declared it might be done the same Term without Leave of the Court, on Payment of Costs, unless the Plaintiff have replied, and then it must be with Leave, and the Defendant must pay Costs.

S. C. Pract. Reg. 302.
Plea withdrawn the same Term without Leave.

Cases of Practice in the

Hil. 5 G. II.

* Page 68

* Molden v. Wrangham, ex dimiss.
Camden. Hil. 5 Geo. II. 1731.

Foley.

Motion for
Judgment in
Ejectment on
the Act 4
G. II. c. 28.

(a) The Affidavit required in this Case is in Substance as follows, that the Declaration

was fixed upon such a Place, being the most notorious Part of the Premises in Question (there being no Person in Possession on whom the Declaration could be legally served); that half a Year's Rent was then due from the late Tenant; that no sufficient Distress was to be found upon the Premises to answer the Arrears then due; that the late Tenant held such Premises by Virtue of a Lease from the Lessor of the Plaintiff, and that therein is contained a Clause of Re-entry for Non-payment of that Rent.

Seller

Court of Common Pleas.

Hil. 5 G. II.

Seller *versus* Faceby.

Borret.

ON a Motion to stay Proceedings, it was insisted that the Declaration being delivered the 22d of October could not be regular, it being before the first Day of the Term; but the Court held it was regular, because a Declaration may be delivered on the Essoin or Return Day, or any Day after, (a) *de bene esse*, tho' a Rule can't be given till the first Day of the Term; another Objection was, that the Notice of the Declaration was not good, not setting forth the (b) Nature of the Action, whether Debt or Case; the Notice was, That a Declaration upon a Note under Hand, and for Goods sold, was filed in the Office; whereas it was insisted that an Action of Debt might be brought for the same, and therefore that the Nature of the Action was not sufficiently specified; of which Opinion was the Court, and held the Proceedings irregular.

A Declaration may be delivered *de bene esse*, on the Return Day or after, and the Notice must specify the Nature of Action.

(a) Ante 16.

Anderton v.

Moreton,

Reg. Mich. 9

Geo. II.

Charlton v.

Hankey, Mich.

1733.

Laro v. Re-

well, Easter

1734.

(b) *Reg. Mich.*

1 Geo. II.

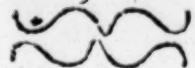
Post. Taylor v.

Sherman,

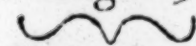
Trin. 1735.

Cases of Practice in the

Hil. 5 G. II.



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Motion that
Costs might be
taxed as be-
tween Attor-
ney and Cli-
ent denied.
Post. 70.
Durrant,
v. Kerr.

* Southmead & al' v. Northmore.

A Motion to review Costs, upon which a Question arose, Whether as this Case stood, being by an Agreement in Writing to pay Debt and Costs, the Costs should be taxed as between Attorney and Client? To which at first the Court were inclined, but afterwards altered their Opinion, and discharged the Rule.

Kiping versus Janfon,

Cooke.

Judgment
signed with-
out a Rule,
where the
Warrant is
above a Year's
standing, not
good.

A Motion to set aside a Judgment on a Warrant of Attorney, dated the 19th of October 1730. empowering the Confession of a Judgment as of the next Hillary Term or any subsequent Term, and the Judgment not signed till the 7th of December 1731. and then without a Rule of Court for that Purpose; it was insisted that the Judgment should have been entered within the Year from the Date of the Warrant, and that the Plaintiff has not four Terms inclusive of the Term mentioned in the Warrant (which in many Cases will give him a longer Time) to enter it; to which Opinion the Court inclined,

Court of Common Pleas.

inclined, and therefore made a Rule to shew Cause. *Hil. 5 Geo. II.*

Afterwards the Court recommended it to the Parties, to refer it to the Prothonotary to examine how much was due to the Plaintiff, and upon Payment of so much as was really due, that the Judgment should be set aside; and a Rule was made by Consent for that Purpose.

Smith *versus* Jenks.

Cooke.

A Motion to set aside a Judgment and a Writ of Inquiry; the Case was, The Defendant was served with Process, returnable the second Return of Michaelmas Term; the Declaration had been left in the Office before the Effoin Day of this Term, and Notice thereof delivered the 26th of January, which was dated the 24th of that Month, Judgment signed this Term, and Notice of executing the Inquiry given, and the Defendant never applied till the Day before the Inquiry was to be executed; wherefore * the Court denied the Motion, and said the Defendant should have come sooner.

S. C. Praet. Reg. C.P. 127. Motion to set aside Judgment and Inquiry denied, being too late. Post. Grimes v. Clewer, Mich. 11 Geo. II. Morse v. Farnham, Trin. 1733.

* Page 70

Note; *Chapple versus Thomas*, and *Wrath versus Rose*, the same Term, the like Motions were denied for the same Reason.

Cases of Practice in the

Hil. 5 G. II.

Durrant, vid', v. Kerr & al'; Ea-
dem v. Lover & al'.

Cooke.

On Award to
pay Costs,
only common
Costs to be
taxed.

Ante 69.

Southmead v.

Northmore.

AN Award to pay Costs; Mr. Ju-
stice Price ordered that Costs should
be taxed as between Attorney and Cli-
ent, and they were taxed accordingly;
but on Motion to discharge a Rule
which had been granted last Term for
an Attachment, for not paying the
Costs so taxed, the Court held the said
Taxation irregular, and that the De-
fendant should not in any Case be
charged but with Costs as between
Party and Party, without a Special
Order or Agreement for that Purpose;
and they discharged the said Rule for
an Attachment, and ordered that Costs
should only be taxed as between Plain-
tiff and Defendant.

Davis v. Edwards, Bart. ex dimiss.
Major', &c. Salop.

Cooke.

Inspection of
Court Rolls
denied.

Ante 6. Anon.

Ante 26.

Knight v.
Wotton.

Ante 21.

Lock v. Hyet.

A Motion to inspect Court-Rolls, and
produce them at the Assizes; the
Court denied the Motion, and said
where there is a Dispute between two
Lords of Manors, the Court will not
oblige

Court of Common Pleas.

oblige either to expose his Title, Books, *East. 5 G. II.*
or Rolls.

Thompson *versus* Merredeth.

Foley.

A Motion by Defendant for Costs, according to the Stat. 3 Jac. I. c. 15. the Defendant being an Inhabitant in London, and the Action under 40s. but in this Case a Judgment had been signed and set aside, upon Terms of going to Trial, by which the Defendant had agreed to try it in this Court, and waived the Benefit of Costs by Virtue of the Stat. 3 Jac. I. c. 15. and therefore the Motion was denied.

* Reed v. Brown. *East. 5 G. II.* * Page 71

A Motion to set aside a Judgment which had been signed for want of a Rejoinder, because the Defendant's Attorney was not called upon for a Rejoinder; it appeared that a Demand was made upon a former Agent for the Defendant's Attorney, but none had been made on the Agent then concerned in the Cause; the Court held, that calling upon a former Agent was not sufficient, for there must be a Demand made

*S. C. Pract.
Reg. C.P. 280.
Judgment set
aside because
Defendant's
former Agent
only was cal-
led upon for a
Rejoinder in
Writing.*

Cases of Practice in the

East. 5 G. II. made upon the Agent concerned in the Cause.

Duffield *versus* Warden.

Cooke.

Plaintiff to sue out a new Writ of Error at his own Costs, and pay Costs of Motion, he not signing his Judgment in Time.

Ante 50.

Harding v.

Avery.

Ante 54.

Griffin v.

King.

A Motion to oblige the Plaintiff to sue out a new Writ of Error at his own Expence, the Plaintiff having delayed Signing his Judgment till the Return of the Writ of Error was expired, tho' called upon for that Purpose; the Court ordered a new Writ of Error to be sued out, at the Plaintiff's Expence, and that he should pay the Defendant his Costs.

But see ante *Harding versus Avery, Mich. 2 Geo. II.* where it was held that the Plaintiff may sign his Judgment when he pleases, and if he thinks fit to defer Signing it till after the Return of the Writ of Error, he has a Right so to do, and might then take out Execution; and *Quære*, for it does not appear in this Case, that the Plaintiff hath in any Manner misbehaved himself.

Court of Common Pleas.

East. 5 G. II.

Webb v. Akers, ex dimiss. Burdus.

Warner.

A Motion to set aside a Judgment in Ejectment, upon Affidavit that a Plea was left in the Office; it appeared there was a Plea, but the Filazer's Mark signifying that the Appearance was entered, was not stamp on the Rule; it was held that if a Plea in Ejectment is left in the Office, yet if the Rule by Consent is not annexed to it with the Filazer's Stamp, the Plaintiff may sign his Judgment.

* Note; *Trueman versus Badright, ex dimiss. Rives, Mich. 1733. Thomson,* the like Determination was made by the Court on the same Point.

* Page 72

Hammond *versus* Horner.

Cooke.

A Motion to set aside a Judgment, for that the Defendant's Attorney demanded Oyer of the Bail-Bond, and the Plaintiff signed Judgment the same Day; the Plaintiff's Counsel insisted that there was a Rule given, a Plea demanded in Writing, and Oyer not demanded

S. C. Pract. Reg. C.P. 300.
Judgment set aside for not staying a proper Time after Oyer given.

Cases of Practice in the

East. 5 G. II. demanded till the (a) Rule was out, and Judgment signed eight Hours after Oyer given.

(a) See post. *Littlebales v. Smith, this Term, and Hartly v. Varny, Hil. 7 Geo. II. where it is*

The Court set aside the Judgment, and held that the Defendant ought to have a reasonable Time, after Oyer, to plead, but did not settle the Time. (b)

held that Oyer must be demanded before the Rule is out.

(b) See post. *Littlebales v. Smith, this Term, Theedham v. Jackson, Mich. 6 Geo. II. and Simpson v. Duffield, Mich. 1737. in relation to this Point. See also Blaxland v. Burgesi, Mich. 1733.*

Whitehead *versus* Goodyer, Esq;

Borret.

S. C. Praet. Reg. C.P. 387. Verdict set aside for want of 14 Days Notice, tho' Defendant was in Town. Reg. Cur. Mich. 1654. sec. 21. Ante 59. Poulter v. Skinner.

UPON a Motion to set aside a Verdict, for want of fourteen Days Notice of Trial, it was alledged for the Plaintiff, that the Defendant came to London and staid for some Time, and therefore that London ought to be taken as his Place of Abode, he then residing there, and consequently that the Notice which had been given was good; but the Court were of another Opinion, and set aside the Verdict; for they said the General Rule of Notice shall not be altered upon a Defendant's coming to London for a few Days.

Wilson

Court of Common Pleas.

East. 5 G. II.

Wilson & al' v. Spencer. *Idem*
versus Smith.

Cooke.

A Motion to set aside Judgments signed in these Causes for want of paying for the Demurrer-Books; the Defendants insisted that the Plaintiffs had made it a Concilium before the Books were tendered; the Court said that was no Excuse to the Defendants for not paying for the * Books, the Plaintiff might make the Demurrer a Concilium again, the other being a Mistake, and held the Judgments to be regular.

Motion to set aside Judgment, for not paying for the Books tendered after a Concilium made.

*Page 73

Littlehales *versus* Smith.

Warner.

A Motion to set aside a Judgment, because signed too soon after Oyer demanded; the Court said that the Defendant is to demand Oyer before the (a) Rule to plead is out, and that he hath (b) one Day after to plead.

When Oyer is to be demanded, and in what Time after the Defendant is to plead.

(a) Post. Hart-

ly v. Varny, Hil. 7 Geo. II.

(b) But see ante 72. Hammond v. Horner. Simpson v. Duffield, Mich. 1737. and Theedham v. Jackson, Mich. 6 Geo. II.

Webb

Cases of Practice in the

Trin. 5 & 6

Geo. II.

Webb v. London & al', ex dimiss.
Burdus & al'. *Trin. 5 & 6 G. II.*

Thomson:

Pleas in E-
jectment

withdrawn.

Post. *Right*

v. Wrong,

East. 1734.

But now see

Stat. 11 Geo.

II. c. 19.

IN Ejectment, a Motion for Leave to withdraw several Pleas pleaded without the Defendant's Consent; it appeared that the Landlord (who had caused the Pleas to be pleaded) had not any Authority or Consent from the Tenant for so doing, and that his Title was acquired only by a late Judgment in Ejectment, and there did not appear any Collusion between the Lessor of the Plaintiff and the Tenants; the Court said if the Tenants would not consent, and give the Landlord an Authority to appear and plead those Pleas, he had not, by making himself Defendant, any Power or Authority so to do, and therefore they ordered the Pleas to be withdrawn; but in the Case of an old Landlord (who had been long in Possession) and his Tenants, it was said the Court would probably have interposed in his Favour.

Whitehead

Court of Common Pleas.

* *Whitehead versus Price.*

Cooke.

A Rule to shew Cause why Proceed-
ings should not stay in this Court,
the Cause of Action being under 40 s.
but the Court discharged the Rule, be-
cause the Plaintiff may amend his De-
claration on Application to the Court,
and set all Right.

Mich. 6 G. II.

* Page 74

*S. C. Pract.
Reg. C. P. 245.
Motion to stay
Proceeding be-
cause the Ac-
tion was un-
der 40 s.
Post. Mathews
v. Holcarn,
Mich. 1732.*

Huer v. Whitehead. Mich. 6 G. II.

Cooke.

UPON a Motion by the Plaintiff to
quash a Scire facias, because it was
sued out in a wrong County; the De-
fendant insisted upon Costs because he
had entered an Appearance; but the
Court said that unless the Defendant
has pleaded, no Costs are to be al-
lowed.

*A Scire facias
quashed at the
Plaintiff's Re-
quest quia im-
provide, with-
out Costs.
See Pool. v.
Bradfield,
Mich. 1734.
Stat. 8 & 9
W. III. c. 11.*

Cotton & al' versus Bailie & al'.

Borret.

A Motion for Leave to pass a Fine
thro' the several Offices, it was
taken in the Year 1727. and one of the
Cognizors was dead; the Court ordered
that

*Leave to pass
a Fine of a
former Year.
Post. Sheppard
v. Harris,
Hil. 9 Geo. II.*

Cases of Practice in the

Mich. 6 G. II. that the Fine should pass as of that Year, but Notice was first to be given to the surviving Cognizor.

Fagget *versus* Van Thiennen.

Cooke.

*S. C. Notes
Pract. 44.*

To amend the
Entry of Bail
in the Fil-
zer's Book.

MOVED to amend the Entry of Bail in the Filazer's Book, by making it agreeable to the Instructions, viz. it was Insult' in the Instructions and Ass't in the Filazer's Book, and ordered to be amended Nisi.

** Page 75*

** Faggot versus Van Thiennen.
The same Term.*

Cooke.

To amend
the Recogni-
zance of Bail.

IT was moved to amend the Recognizance which was taken between the same Parties in Case, and to make it in Assault agreeable to the Writ; the Court ordered the Recognizance to be amended accordingly.

Note; *Kitchingham & ux' versus Wilbourn, Mich. 4 Geo. II. Thompson*, the like Amendment was cited to have been made.

Hickeringill

Court of Common Pleas.

Mich. 6 G. II.

Hickeringill v. Knight, in Debt;
And Hickeringill v. Knight, in
Case.

Thompson.

MOTIONS having been made to set aside the Non-Prosses in these Actions, and Rules Nisi granted on shewing Cause, it appeared that one of the Non-prosses was irregular, for the Writ being a Clausum fregit, the Plaintiff had delivered the Defendant's Attorney a Declaration in Covenant, so that the Defendant ought not to have signed a Non-pros; for a Plaintiff on a Clausum fregit may declare in any Action.

*S. C. Pract.
Reg. C.P. 138.
Non-pros suffered to stand because the Defendant did not apply till after Judgment, in an Action brought upon such Non-pros.*

The other Non-pros was regular; but it appearing that Actions had been brought on these Non-prosses, and Judgments obtained thereon; the Court discharged the Rules to shew Cause, for that the Defendant should have complained of the Irregularity sooner.

Cases of Practice in the

Mich. 6 G. II.

Kirwood *versus* Backhouse.

Cooke.

S. C. *Pract.*
Reg. C.P. 165.
Notes pract.
110.

Motion for
Judgment in
Ejectment de-
nied, Decla-
ration being
shewn to the
Wife, but not
tendered.

But see post.
Roe v. Doe,
Hil. 1734.

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A Motion for Judgment in Ejectment; it was sworn by the Person that made the Affidavit, that he went to the Messuage in Question, and the Tenant's Wife refusing to open the Door, but speaking thro' the Wicket, he did shew her a Copy of the Declaration, and acquainted her with the Contents, and read the English Subscription to her, but as soon as he had so done, she shut the Wicket and refused to take the Declaration, and not being able to deliver the same, he affixed the same on the Door of the said * Messuage, which the Tenant in Possession did on the same Day acknowledge to have received. The Court were divided in Opinion, to wit, the Chief Justice and Mr. Justice Denton, that it was not a good Service, and Mr. Justice Price and Mr. Justice Fortescue held the contrary, so no Rule was made.

Note; It did not appear by the Affidavit that the Copy was tendered to the Wife, which the Court seemed to think would have been very material.

Negative

Court of Common Pleas.

Mich. 6 G. II.

Negative *versus* Positive.

Borret.

Lond. ff. **A** Motion the 23d of November for Judgment in Ejection where there was a vacant Possession; it was objected that the Motion came too late, that it should have been moved within a Week after the Beginning of the Term, according to the Rule Trin. 32 Car. II. but upon reading thereof the Court were of Opinion, that vacant Possessions were not within the Meaning of that Rule.

S. C. *Pract.*
Reg. C. P. 169.
Notes Pract.
111.
Motion for Judgment in Ejection, the Possession vacant.

Hamson *versus* Chamberlin.

Borret.

A Motion to amend the Record of an Issue of Nul tiel Record by the Writ of Scire facias; all the Court, after much Debate, were of Opinion that it might be amended by the Sci' fac', and ordered the Amendment accordingly.

S. C. *Notes*
Pract. 3.
Issue of Nul tiel Record amended by Scire facias.
Post. *Cartwright v. Gardner*,
Trin. 10 G. II.

Cases of Practice in the

Mich. 6 G. II.

Harvies *versus* Micklethwaite.

Borret.

Fine ordered
to pass after
the Wife of
the Cognizor
was dead.

Ante 74.

Cotton v.

Bailie.

Post. Shep-

pard v. Har-

ris, Hil. 9

Geo. II.

A Motion against passing of a Fine, the Caption being taken the 21st Day of May; and the Wife of the Cognizor died the 22d of May, upon much Debate and Examination into the Practice, and it appearing the King's Silver was paid, the Court ordered that the Fine do pass.

* Page 77

* Warwick *versus* Fig.

S. C. more at
large, *Pract.*

Reg. C. P. 189.

Notes Pract.

127.

Execution ta-

ken out after

the Return of

a Writ of

Error set aside.

Ante 54.

Griffin v.

King.

Ante 50.

Harding v.

Avery.

Ante 71.

Duffield v.

Warden.

Post. Cooke v.

Harroch,

East. 1733.

Thompson.

A Motion to set aside an Execution taken out upon a Judgment signed in Trinity Vacation after the Expiration of the Writ of Error, which was returnable *tres Trin.* The Court were of Opinion that the Plaintiff could not regularly sign his Judgment and take out Execution thereon, till Michaelmas Term following, because every Judgment is of the first Day of the Term; so the Judgment having relation to the first Day of the Term, must be construed to be signed pending the Writ of Error, which was returnable *tres Trin.*

Court of Common Pleas.

Trin. (a) and consequently the Writ of Error attached upon the Judgment and was a Superfedeas, and Execution afterwards was irregular; which therefore the Court set aside, and ordered Wreath-
ock the Plaintiff's Attorney to pay Costs.

Mich. 6 G. II.

(a) It seems otherwise where the Writ of Error is returnable the first Return of the

Term. 1 *Mod.* 212.

Revel *versus* Snowden.

Borret.

A Motion for a Common Appearance, upon the Determination in the Case of Jackson and Ducket, Hil. 13 Geo. I. because the Defendant was held to Special Bail upon the first Action; the Case was, The Defendant had been arrested and held to Special Bail, and afterwards rendered in Discharge of his Bail, and the Plaintiff proceeded against the Defendant as a Prisoner, and recovered a Judgment; and this being an Action of Debt brought upon that Judgment, and the former Bail being vacated by the Render, the Court held that the Plaintiff might well hold the Defendant to Bail in this Action, he not now having Bail in the first Action. (a)

S. C. Pract. Reg. C. P. 56.
Bail in an Action of Debt on the Judgment, because the Plaintiff had no Bail in the first Action, Defendant being in Prison. *Ante 32.*
Jackson v. Ducket.

(a) But now by a General

Rule, *Hil. 8 Geo. II.* If a Prisoner be discharged for want of Prosecution, and afterwards is arrested by Action of Debt on the Judgment obtained in the Cause, a Common Appearance shall be accepted.

Cases of Practice in the

Mich. 6 G. II.

An Out-Pensioner of *Chelsea College* denied a Common Appearance, not reckoned a Soldier.

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Post. Nicholls

Et al' v. Wilder, East. 6 Geo. II. Stat. 5 Geo. II. cap. 2. 6 Geo. II. cap. 3. 9 Geo. II. cap. 2.

Bowler *versus* Owens.

A Motion by an Out-Pensioner of *Chelsea College* for a Common Appearance, suggesting that he is a Soldier, and within the Act 5 Geo. II. cap. 2 for preventing Mutiny and Desertion; the Court denied the Motion, and held the * Defendant no Soldier within the Meaning of that Statute.

Norton *versus* Gilbert.

Borret.

Motion that the Plaintiff reverse an Outlawry in another County at his own Costs, denied. Ante 61.
Hayes v. Longbotbam.

A Motion to reverse an Outlawry at the Plaintiff's Costs, for that the Defendant was outlawed in a Foreign County; on shewing Cause it appeared the Plaintiff had good Reason to proceed to Outlawry, the Defendant being a Clergyman and never appearing but on a Sunday, and altho' he was outlawed in a different County from that where he dwelt, yet the Outlawry was in the County where the Action was laid to arise. The Court gave their Opinions seriatim, and against the Opinion of the Chief Justice discharged the Rule to shew Cause, for that

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that they held the Outlawry, tho' not in the County where the Defendant dwelt, yet where the Cause of Action was laid to arise, to be regular, and that it was not necessary to shew an Attempt to arrest the Defendant. *Mich. 6 G. II.*

Hirst *versus* Dixon.

Cooke.

A Motion for the Plaintiff to have the Costs of taxing his Bill, there being only a Ninth Part taken off upon the Taxation, and a Rule to shew Cause was granted, which Rule was afterwards made absolute by the Court.

S. C. Pract.

Reg. C. P. 36.

Costs ordered the Attorney on taxing his Bill, a sixth Part not being taken off.

Stat. 2 G. II.

c. 23.

Threlkeld *versus* Goodfellow.

Thomson.

A Motion to have the Imparllance Roll brought into Court, and that a Special Imparllance might be entered, in order that the Defendant might plead in Abatement; the Question was whether a Plea in Abatement could be pleaded within the first four Days of the subsequent Term, without a Special Imparllance, or whether a Special Imparllance should be granted to that end; the Court declared it was the established Practice, where the Declaration

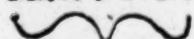
S. C. Pract.

Reg. C. P. 1.

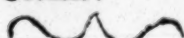
Special Imparllance when to be allowed,

Cases of Practice in the

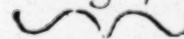
Mich. 6 G. II.



An Out-Pensioner of *Chelsea College* denied a Common Appearance, not reckoned a Soldier.



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Post. Nicholls

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Borret.

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that they held the Outlawry, tho' not in the County where the Defendant dwelt, yet where the Cause of Action was laid to arise, to be regular, and that it was not necessary to shew an Attempt to arrest the Defendant. *Mich. 6 G. II.*

Hirst *versus* Dixon.

Cooke.

A Motion for the Plaintiff to have the Costs of taxing his Bill, there being only a Ninth Part taken off upon the Taxation, and a Rule to shew Cause was granted, which Rule was afterwards made absolute by the Court.

S. C. Pract.

Reg. C. P. 36.

Costs ordered

the Attorney

on taxing his

Bill, a sixth

Part not being

taken off.

Stat. 2 G. II.

c. 23.

Threlkeld *versus* Goodfellow.

Thomson.

A Motion to have the Impar lance a Roll brought into Court, and that a Special Impar lance might be entered, in order that the Defendant might plead in Abatement; the Question was whether a Plea in Abatement could be pleaded within the first four Days of the subsequent Term, without a Special Impar lance, or whether a Special Impar lance should be granted to that end; the Court declared it was the established Practice, where the Declara-

S. C. Pract.

Reg. C. P. 1.

Special Im-

par lance

when to be

allowed,

Cases of Practice in the

Mich. 6 G. II. tion is delivered so late that the Defendant is not obliged to plead in the same Term, for him to apply to the Prothonotary for * a Special Imparlance, within the first four Days in the succeeding Term, or that he could not plead in Abatement, which he may do, having such Special Imparlance; but to all Declarations, where the Defendant is to plead the same Term, the Defendant may plead in Abatement within four Days after Declaration delivered, without any Imparlance; but in such Case after the four Days no such Plea shall be accepted, tho' no Rule to plead be given.

*Ante 23.
Eas. 1722.
Ante 63.
Biddleston v.
Atcherley.*

Note; *Napper* against *Biddle*, *Mich. 1735.* *Cooke*, there was the like Resolution by the Court upon the same Point; *Notes Pract.* 238.

Haydon, Executor, v. Norton.

Borret.

An Executor must pay Costs on a Discontinuance.
*Ante 14.
Lamley v.
Nichols.
Ante 61.
Atkins v.
Spence.*

A Bill against a Member of Parliament, and a Demurrer thereto; the Plaintiff moved to discontinue; and it was debated whether he (being an Executor) should pay any Costs on such Discontinuance. Resolved, that Costs must be paid, it being the Default of the Executor himself.

Oades

Court of Common Pleas.

Mich. 6 G. II.

Oades *versus* Forrest.

Thompson.

A Scire facias was sued out into Middlesex against the Defendant as Bail, and a Fi' fa' issued, directed to the Sheriff of that County who returned Nulla bona thereon, then a common Fi' fa' was executed in London without mentioning it to be a Testatum, and now upon Motion to set the same aside, the Court held it good, and said there was no Occasion to insert the Form of a Testatum in the Writ. in order that the Writ itself might shew it was a Testatum; and they said, if it had been necessary, they would have given Leave to amend.

S. C. Pract.

Reg. C.P. 210.

Notes Pract.

129.

Fieri facias

held good

without ma-

king it in

Form of a

Testatum.

Mathews *versus* Holcarn.

Thomson.

A N Action of Debt for Rent quod reddat 21 s. and concludes ad dampnum 100 s. On a Motion to stay Proceedings, the Court not having Jurisdiction, it was held that the ad dampnum gave the Court Jurisdiction, and that if it had been necessary, the Court might

A Motion to

the Jurisdicti-

on of the

Court, the

Debt being

under 40 s.

Ante 74.

Whitehead v.

Price.

Cases of Practice in the

Mich. 6 G. II. might permit the Plaintiff to add a new Count.

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* *Smith versus Paschall.*

Cooke.

The Damages
laid in the
Declaration
are the Cause
of Action.

A Motion to set aside a Verdict because the Proceedings were in Latin, and the Jury had only found 8 l. Damages; the Court seemed to be of Opinion, that if the Action was commenced before the Expiration of the Sessions, then all Proceedings must be in Latin, and not one Part in English and the other in Latin; but as for the Cause of Action, whether it should be construed to be what is laid in the Declaration, or what is found by the Jury, was the Question, and a Rule Nisi was granted.

Note; *Scot versus Ferral, East. 6 Geo. II.*

Vide the next Case.

By the Stat.
5 Geo. II. c.
27. after the
Expiration of
that Session,
viz. 1 June
1732. all
Process under

10 l. to be in English; and by 4 Geo. II. c. 26. after the 25th of March, 1733. all Process whatsoever to be in English.

West

Court of Common Pleas.

Mich. 6 G. II.

West *versus* Nicholls.

Thomson.

Proceeds in English, and Declaration delivered in Latin; on Motion to stay Proceedings for that the Declaration should have been in English; for the Plaintiff it was insisted that this Declaration being laid ad dampnum 40l. should be considered as delivered by the By; and therefore notwithstanding the Writ was in English, yet the Dampnum being laid 40l. in the Declaration, the Declaration must be in Latin; of which Opinion was the Court, but that if the Plaintiff had declared for under 10l. he must have declared in English.

Note; *Webster versus Jordan*, East. 6 Geo. II. Thomson, a Declaration in English to the Damage of the Plaintiff 40l. and for that Reason Judgment was stayed.

S. C. Pract.
Reg. C. P. 321.
Writ in English and Declaration in Latin *ad Damp.* 40l. is by the By. Vide the preceding Case.
By Stat. 5 G. II. c. 27. after 1 June 1732. Process &c. under 10l. to be in English, but by Stat. 4 G. II. c. 26. after 25 March 1733. all Proceedings whatsoever to be in English.

* Welberry *versus* Lister.

* Page 81

Thomson.

A Motion to put off a (a) Trial upon Affidavit of several Witnesses being wanting, who were sworn to be material

Motion to put off Trial denied. Post. Price v. Warren, Hil. 1733.

tion must be made two Days before the Trial, post. Roberts v. Downes, East. 7 Geo. II.

(a) Such Motion. Roberts v.

Cases of Practice in the

Mich. 6 G. II. material Witnesses, as he believes; the Motion was denied because it is not sworn positively that they are material, which is always required, for that the Court will not delay the Plaintiff without manifest Cause.

Bartholomew *versus* Golding.

Borret.

S. C. Pract.
Reg. C.P. 221.
Notes Pract.
201.

When Judgment is set aside for Irregularity, the Plaintiff must deliver another Declaration.

A Motion to set aside Judgment; it appeared that a Judgment had been set aside in the same Cause this Term for Irregularity in the Notice, and upon that the Plaintiff gave fresh Notice, without delivering a new Declaration, imagining the first Declaration would stand good; but the Court set aside this Judgment also, for the Plaintiff should have filed another Declaration according to the second Notice.

Friend *versus* Mullens.

Cooke.

Proceedings on the Bail-Bond stayed, the Plaintiff having declared in the Original Action.

THE Defendant moved to stay Proceedings on the Bail-Bond, and to amend a Mistake in the Bail-piece, which Mistake was the Reason that the Plaintiff had assigned the Bail-Bond. It appeared the Plaintiff had delivered a

Court of Common Pleas.

a Declaration in the Original Action, *Mich. 6 G. II.*
whereby he had concluded himself, and
therefore could not proceed on the
Bail-Bond; Proceedings were ordered
to stay.

Note; the Plaintiff might have delivered
the Declaration *de bene esse* before the Bail
had been actually filed.

Theedham *versus* Jackson.

Thomson.

IN this Case the single Question was,
Whether the Defendant should have
the same Time to plead after Oyer
given, as he had at the Time Oyer
was demanded; the Court held he
should, and set aside the Judgment,
which was signed * the next Day after
Oyer given, the Oyer being demanded
two Days before the Rule was out.

S. C. Pract.
Reg. C. P. 26.
Notes Pract.
155.

Time of
pleading after
Oyer given.

* Page 82

But see ante 72.
Hammond v.

Hamor, Littlebales v. Smith, 73. and Simpson v. Duffield, Mich. 1737.

Cases of Practice in the

Hil. 6 Geo. II.

Lane, vid', v. Newman. *Hil. 6 Geo. II. 1732.*

Cooke.

Motion to change the Venue to *Exeter* denied.

Ante 36, 41.

Post. Craftel v. Coker, Hil.

9 Geo. II.

Costar v.

Standen, Hil.

8 Geo. II.

A Motion by Mr. Serjeant Glyde to change the Venue from London to Exeter, upon Affidavit; but denied, for the Court will not change the Venue to a City and County of itself without Consent of the Parties.

Note; *Cowling* versus *Reynoldson*, *Trin. 6 & 7 Geo. II. Thomson*, the like Motion was again for the same Reason denied by the Court.

Egleton v. Newman. Idem v. Senef.

Cooke.

S. C. Notes

Pract. 328.

Motion on

Nul tiel Re-

cord, the De-

fendants shew

the Variance.

Ante 44.

Watkinson v.

Swyer.

THE Defendants upon *Nul tiel Record* shew that the Plaintiff declared against the Defendants, upon a Judgment recovered against *Curphey*, when by the Record it appears that the Judgment was against *Scurfee*; which the Court held was a material Variance, and therefore Judgment was given for the Defendants.

Simpson

Court of Common Pleas.

Hil. 6 Geo. II.

Simpson *versus* Gray & ux'.

Borret.

A Motion to set aside an Execution, being sued out after the Year, without reviving the Judgment by Scire facias; the Plaintiff insisted, that he had been tied up by an Injunction of the Court of Chancery, and for that Reason there was no Necessity to sue out any Scire facias; but the Court overruled his Reason; for the Courts of Law do not take Notice of Chancery Injunctions, as they do of Writs of Error, and ordered the Execution to be set aside, and that the Plaintiff should pay the Defendant his Costs; but by Consent no Action was to be brought by the Defendant.

S. C. Pract.
Reg. C.P. 377.
No Execution upon a Judgment after the Year, without reviving by Scire facias, notwithstanding the Cause had been staid by Injunction.
Salk. 322.
6 Mod. 288.
Booth v. Booth.

* Pace *versus* Ellison & ux'.

* Page 83

Cooke.

A Motion to set aside Non-pros for want of a Replication; the Defendant pleaded Non Assumpsit to Part, and in Abatement to the Residue; upon the Non Assumpsit no Issue was joined, but Demurrer to the Abatement; upon which the Defendant joined in Demur-
rer

Non-pros for want of Replication, where Non Assumpsit was pleaded as to Part, and Demurrer joined as to the Residue.

Cases of Practice in the

Hil. 6 Geo. II. rer and signed a Non-pros for want of a Replication to the Non Assumpsit, and at the same Time paid for the Demurrer-Books, and defended the Argument. On arguing the Demurrer, Judgment was given against the Defendant, and a Respondeas ouster awarded; and now, upon hearing Counsel on both Sides, the Court set aside the Non-pros, but ordered the Plaintiff to pay the Costs thereof, but the Defendant was not to be allowed any Costs of the Motion.

Wife & ux' v. Lawrence & al'.

Cooke.

*Habeas Corpus
cum Causa up-
on a Homine
Replegiando.*

A Motion to discharge the Defendants, being taken on a Capias in Withernam, after Capias, Alias, and Pluries on a Homine replegiando had been issued; it was insisted that the Capias in Withernam had issued irregularly, for that no Return was made upon the Capias or Alias, but on the Pluries only an Elongata was returned. The Court granted a Rule to shew Cause; afterwards the Defendants waived their Motion, and being brought up by Habeas Corpus came and offered to put in Bail as soon as the Plaintiff had declared against them, and prayed that,
if

Court of Common Pleas.

if the Plaintiffs did not declare against them *instante*, they might be nonsuited and pay Costs; the Plaintiffs thereupon delivered a Declaration in Court, and the Defendants pleaded *Non ceperunt*; one of the Defendants being an Infant was admitted in Court by Joseph Minall her Guardian, who was also one of the Defendants; after the Guardian was bound in a Recognizance of 400l. by his Consent, as well for the Infant Anne Lawrence, as for his Wife Mary Minall, severally, and the Bail in 200l. severally, viz. John Nichols, Matthew Langley, Samuel Kirton and Benjamin Godfrey, according to the Form in the Case of *Ilatt & ux' versus Lisset*, Mich. 1 Geo. II. Upon this the Sheriff was discharged, and the Defendants were set at Liberty.

Hil. 6 Geo. II.

See ante 39,
40, 41.
Ilatt & ux'
v. Lisset.

* *Tasker versus Geale & al'.*

*Page 84

Croke.

A Rescous was returned, upon which the Filazer made out an Attachment, and in the same Writ he inserted a Capias with an *Acetiam*, as a Continuance of the former Capias, in order to prosecute the Suit against the Defendant; and now the Court was moved to set aside such Writ, upon which the Defendant had been arrested and

S. C. Notes
Pract. 302.
Attachment
upon a *Rescous*
and *Capias* in
the same
Writ.

Cases of Practice in the

Hil. 6 Geo. II. and was brought up by Habeas Corpus, and committed to the Fleet for want of Bail; but the Court held the Proceedings intirely regular, and that the Writ was made out according to common Form, and therefore denied the Motion.

Officina Brev.

194.

Post. The King

v. Philips,

East. 6 G. II.

Thomas *versus* Bushell.

Cooke.

Judgment held good upon a Declaration left in the Office, tho' the Defendant's Attorney was known, he having Notice given him of the Declaration. Ante 50. *Morris v. Parry.* *Post. Hutchings v. Lillyman, Hil. 9 Geo. II.*

A Motion to set aside the Judgment, upon Affidavit that the Declaration was left in the Office, whereas the Defendant had entered his Appearance, and the Plaintiff well knew the Defendant's Attorney, and therefore should not have left it in the Office; but it appearing that Notice thereof had been delivered to the Defendant's Attorney, the Court declared, that leaving a Declaration in the Office, and giving Notice to the Defendant's Attorney, was equivalent to the Delivery of it to the Attorney, and so the Judgment was held to be regular; and it was also declared, that the Plaintiff's Attorney is not bound to give Notice the same Day the Declaration is left in the Office, but may give Notice in any reasonable Time afterwards, but it is deemed as no Declaration but from the Day of Notice.

Note;

Court of Common Pleas.

Note; *Hale* versus *Breedon*, *East*. 6 *Geo.* *Hil.* 6 *G.* II.
II. *Borret*, the like Resolution upon the same Point of Practice. See *Notes Pract.* 5.

Stanton versus *Winch*.

Thomson.

A Motion to set aside an Inquiry, being executed the Day after it was returnable, the Return-Day being Sunday, and the Inquisition taken on the Monday; the Court held the Execution of the Inquiry irregular, and let the same aside; but the Plaintiff had Leave to proceed to the Execution of a new one upon Payment of Costs; and * it was said a Writ of Inquiry may be executed at any Time on the Return-Day before the Rising of the Court.

Inquiry set aside, being executed the Day after it was returnable.
Post. Suttle v. Layton, Mich. 1733.

* Page 85

Jenkinson v. *Staples*, *Spooner* *Vouchee*.

Cooke.

A Motion to amend a Recovery, by inserting several Parishes which were left out in the Instructions to the Cursitor; it appeared that the Deed to lead the Uses of the Recovery was dated the 7th of October, the Writ of Entry tested the 11th of December, and

S. C. Pract. Reg. C.P. 371.
Recovery amended by putting in several Parishes.
Ante 9, 17, 26.
Post. Sheppard v. Harris,
Hil. 9 *G.* II,

Cases of Practice in the

Hil. 6 G. II. returnable in Menssem Mich. The Court
ordered the Recovery to be amended.

Spring *versus* Bilson.

Thomson.

No Tender or
bringing Mo-
ney into
Court after a
regular Judg-
ment.

Ante 59.

Tuney v.

Clark.

A Motion to bring Money into Court
after Judgment had been signed,
and set aside on Payment of Costs,
but denied because Judgment had been
regularly signed.

Makepeace v. Stevens and others.

Cooke.

S. C. Pract.

Reg.C.P. 324.

Notes Pract.

310.

A Case made
before a Judge
of Assize, and
he refers it to
the Court,
and the Court
direct the De-
livery of the
Postea.

IN Ejectment, on the Trial at the
Assizes, a Case was made and refer-
red to the Judge of Assize, and he af-
terwards referred it to the Opinion of
the Court; and now a Question arose
in what Manner the Postea is to be de-
livered to the Party, whether by a Cer-
tificate from the Court by Rule to the
Judge who tried the Cause, and then
by his Order, or whether the Court
should make a Rule for the Delivery
thereof, without applying to the Judge
of Assize; the Court, after due Consi-
deration, made a Rule for the Deli-
very of it, without any Application to
the Judge of Assize.

Godfrey

Court of Common Pleas.

Hil. 6 G. II.

Godfrey *versus* Mathews & al'.

Cooke.

A Common Clausum fregit was sued out, returnable the first Return of this Term, a Declaration filed de bene esse pursuant to the Rule made in Easter Term, 3 Geo. II. and * Notice thereof * Page 86 delivered, and a Rule to plead given; the Plaintiff signed Judgment before the Expiration of eight Days from the Delivery of such Notice, tho' the Defendant lived above 20 Miles from London. Upon a Motion to set aside the Judgment, the Court held that the Plaintiff should have staid eight Days after the Delivery of the Notice of the Declaration, tho' he gives but a four Days Rule to plead, and therefore set aside the Judgment.

Judgment set aside because signed before the eight Days expired. Post. *Lazenby v. Bradley*, Mich. 1733.

Zouch *versus* Bell.

Thomson.

A Motion for Costs for not proceeding to execute a Writ of Inquiry; the Defendant had been put to very great Expences by the Plaintiff's causing many Notices to be delivered, which had never been countermanded; on hearing Counsel on both Sides the

Costs for not proceeding to execute Inquiry after many Vexatious Notices denied.

Cases of Practice in the

Hil. 6 G. II. Motion was denied, for it has never been the Practice to grant Costs for not proceeding to execute Writs of Inquiry. (a)

(a) But see
Reg. Cur'

Trin. 13 Geo. II. by which the Practice is altered, and Costs are now given.

Dixie, Bart. v. Somerfield & al'.
Intr. Trin. 5 & 6 G. II. rot. 706.

Cooke.

Full Costs denied in Trespas.

IN Trespas (inter alia) quare Clausum freger' & solum, &c. cum rutris, maris & ligonibus effoder' & subverter', nec non palos, repagula & januas, scilt', centum palos, &c. ibidem fix' & erect' ad valenc', &c. freger', diruer' & prostraver', &c.

Ante 2, 3,
24, 44.
Stat. 22 &
23 Car. II.
c. 9.

A Verdict was found for the Plaintiff and Damages under 40s. and now a Motion was made that the Plaintiff might be allowed full Costs, and a Rule Nisi granted for that Purpose; but on shewing Cause the Rule Nisi was discharged; for the Freehold might have come in Question in this Action, therefore the Judge's Certificate was necessary to intitle the Plaintiff to full Costs.

Gynes

Court of Common Pleas.

Hil. 6 G. II.

* Gynes qui tam v. Stephenfon.

* Page 87

Cooke.

AN Action upon the Statute of 5 Eliz. cap. 4. for exercising the Trade of a Glover, without serving Seven Years Apprenticeship, and a Verdict for the Plaintiff, and 4l. given for the Penalty pursuant to the Act; the Defendant moved that Proceedings should be staid upon Payment of the 4l. and a Rule to shew Cause being granted, upon the Plaintiff's shewing Cause, the Question was, Whether any Costs should be allowed, and the Rule being enlarged till next Easter Term, the Court, upon hearing Counsel on both Sides, then held that no Costs ought to be allowed, for the Statute gives none; and the Plaintiff in this Case is not a Party injured, but a common Informer, and therefore is not within the Meaning of the Statute of Gloucester, which gives Costs only where he should recover Damages; but in Case the Plaintiff had been a Party grieved, and recovered a certain Penalty, such Penalty should be considered as a Recompence for his particular Damage, and he should have Costs within that Stat. The former Rule was made absolute.

Costs denied upon a Verdict on the Stat. 5 Eliz. Vide ante 22 Pemple qui tam v. Tinsley.

Stat. Gloucester, 6 Ed. I. c. 1.

Cases of Practice in the

East. 6 G. II.

Franklin *versus* Nash.

Thomson.

Attachment
against a
High Sheriff
on Affidavit of
Service of
Rule on him.
See *Arn v.*
Neeler, Mich.
9 Geo. II.

(a) *The Court*
have since
thought it more
proper that
such Rules
should be served
on the Under-
Sheriff, and

therefore it is now expressed in the Rule, that the Sheriff shall peremptorily return the Writ on Notice to be given to his Under-Sheriff.

A Motion for an Attachment against the Sheriff, upon a peremptory Rule to return a Writ, on Notice to him or his Under-Sheriff, and Affidavit that the Rule was served on the (a) High Sheriff, and that the Writ was not returned or filed with the Custos Brevium.

The Court said that the Notice to the High Sheriff was good, for both he and his Under-Sheriff are subject to the Court, and granted an Attachment against the High Sheriff.

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\* Page 88  
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* Cooke *versus* Harrock. *East. 6*
Geo. II. 1733.

Cooke.

S. C. Notes
Pract. 130.
Execution
good tho' a
Writ of Error,
the final Judgment being
signed after

the Expiration of the Writ of Error. Ante 50. *Harding v. Avery.*
Warwick v. Figg, Mich. 6 Geo. II. 1 Mod. 212.

A Motion to set aside an Execution taken out after the Expiration of the Writ of Error; it appeared the Writ of Error was returnable before the

Court of Common Pleas.

the Final Judgment was signed, and *East. 6 G. II.*
therefore the Court held that it could
not remove the Record of that Judgment;
and denied the Motion.

Note; If the Writ of Error had been returnable after the first Return of the Term in which Judgment was signed, it would have removed the Record, such Judgment having relation to the Day in Bank.

Hefelton *versus* Lister, Esq;

Borret.

A Motion to justify Bail upon Examination of the Bail in Court; the Plaintiff's Attorney shewed to the Court that the same Persons were Bail in another Cause, and represented that he verily believed they were very insufficient, for the Defendant himself had told him they were not worth a Goat, he likewise informed the Court that one Dewell a Sheriff's Officer had just then been with him, and told him if he would go out of Court, the Defendant would give him Half a Guinea; Dewell was likewise examined upon Oath, and declared the same; upon this the Court all agreed that this was an Attempt in the Defendant to pervert Justice, and a notorious Contempt of the

A Defendant committed to the Fleet, for endeavouring to bribe the Plaintiff's Attorney not to appear against him on justifying Bail.

Cases of Practice in the

East. 6 G. II. the Court, and committed him to the Fleet till farther Order. •

The King *versus* Philips.

Thomson.

*S. C. Notes
Pract. 303.
Attachment of
Course on a
Rescue re-
turned.
Ante 84.
Tasker v.
Geale.*

THE Court declared that, upon a Rescous returned, an Attachment goes of Course without Motion, and when the Party offending is brought in he is to be fined, and not examined upon Interrogatories, because the Return of the Sheriff is a Matter of Record, and not traversable, and the Party, if he is injured, may bring an Action against the Sheriff for a false Return.

* Page 89

* Gilbert *versus* Morshead.

Borret.

Motion for a new Writ of Inquiry, in an Action for mesne Profits, where the Jury gave small Damages.
Post. Gilbert v. Nightingale, Mich. 1736.

IN an Action of Trespass for mesne Profits, a Motion was made by the Plaintiff, for Leave to quash his own Writ of Inquiry, and to issue a new one, upon several Affidavits on his Behalf, that the Jury gave very small Damages; that the Sheriff would not admit the Plaintiff to prove his Title, in order that the Jury might assess Damages

Court of Common Pleas.

images from the Time it accrued to *East, 6 G. II.*
him; and that the Defendant's Attor-
ney and others influenced the Jury to
favour the Defendant. The Court
seemed to think that this was a Misbe-
haviour in the Sheriff and the other
Persons, and granted a Rule to shew
Cause.

Hart *versus* Jewks.

Thomson.

ON a Motion to set aside a Judg-
ment in Dower, because the Plain-
tiff had not given a peremptory Rule
to plead, as usual in Real Actions; it
appeared that the Defendant had plead-
ed a Plea in Abatement, but without
an Affidavit to verify the Truth of the
Plea; the Court set aside the Judg-
ment, and allowed the Defendant four
Days Time to plead.

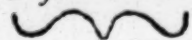
*In Dower,
a peremptory
Rule to plead.
Tomkins v.
Perry, Trin.
8 & 9 G. II.
Ante 38.
Delafountain
v. Mings.*

Note; The Judgment in this Cause was
set aside, because no peremptory Rule to
plead was entered, otherwise the Judgment
would have been regular: A Plea in A-
batement without Affidavit to support the
Truth thereof being held to be no Plea
at all.

Nichols

Cases of Practice in the

East. 6 G. II.



Nichols & al' *versus* Wilder.

Cooke.

S. C. Pract.

Reg. C. P. 60.

Notes Pract.

307.

Motion to discharge a Soldier arrested.

Stat. 5 G. II.

Ante 77.

Bowler v.

Owens.

A Motion to discharge a Soldier arrested and held to Bail, and a Rule Nisi granted; upon shewing Cause it appeared that this was an Action of Debt upon a Judgment, and that the Original Action, in which the Judgment had been recovered, was for a Debt under 10l. The Court said the Act of Parliament for preventing Mutiny, &c. intended the Debt that was due at the Time of holding to Bail, and this being an Action of Debt, on a Judgment for upwards of 10l. tho' the Original Cause of Action did not amount to so much, is not within the Intent of the Act; and therefore they discharged the Rule to shew Cause.

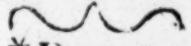
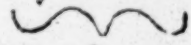
Note; *Bilson versus Smith*, *East. 5 G. II. Foley*, the like Resolution upon the same Point. But since by the *Stat. 13 G. II.* for preventing Mutiny and Desertion, the original Debt must be 10l.

Daking

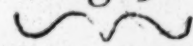
Court of Common Pleas.

* *Daking versus Thornhill.*

East. 6 G. II.



* Page 90



Thomson.

A Verdict and Judgment for the Plaintiff on a Bond, on which Execution was taken out, and the Debt, Interest and Costs, to the Time the Execution was completed, levied out of the Penalty; the Defendant moved for Restitution of all the Money levied, being 37l. 10s. except 21l. which was allowed on the *Postea*; this Matter was long debated by the Court, at length they refer'd it to Mr. Prothonotary Thomson, to compute what was due, as between Attorney and Client, and afterwards they seemed to be of Opinion, that in all such Cases the Prothonotary should allow Interest and Costs from the Time of the Judgment to the completing the Execution.

S. C. Pract.

Reg. C P. 213.

Where the Plaintiff may levy Interest and Costs to the Time the Execution is completed.

Osborn vid' versus Carter.

Cooke.

A Motion against several Persons for executing an Outlawry on a Sunday; the Rule was to shew Cause why the Defendant should not be discharged, and why an Attachment should not be issued against them; upon debating this

S. C. Notes

Pract. 224.

Execution of an Outlawry on a Sunday set aside, but an Attachment denied.

Cases of Practice in the

Trin. 6 & 7 Geo. II. this Matter the Rule for the Discharge of the Defendant was made absolute, and that Part of the Rule for an Attachment was discharged, because the Act of 29 Car. II. cap. 7. gives a Remedy by Action.

The King v. Tirrel & al'. *Trin. 6 & 7 Geo. II. 1733.*

Cooke.

*S. C. Notes
Pract. 304.
Rescuers admitted to Bail,
and Fine respited till Determination of
an Action
against the
Sheriff for a
false Return.*

A Rescuers returned this Term, and a Motion by the Rescuers to submit to a Fine, or to be admitted to Bail, they being advised to bring an Action against the Sheriff for a false Return: The Court declared that if the Rescuers intended to bring an Action against the Sheriff, they would admit them to Bail, and respite the Fine till the Event of such Suit, and upon the Rescuers offering to bring an Action and entering into a Recognizance for their Personal Appearance, the Court ordered them to be discharged.

Nota; A Verdict being given against the Sheriff, the Court on Motion and producing the Postea, ordered the Recognizance to be discharged.

Herbert

Court of Common Pleas.

* Herbert *versus* Shaw.

Trin. 6 & 7

Geo. II.

* Page 91

A Motion to change the Venue from Middlesex to the County Palatine of Lancaster, but denied; for the Court hath constantly denied such Motions for changing the Venue into a County Palatine.

Venue not changed to a County Palatine.

Post. *Craffell v. Cocker, Hil.*

9 Geo. II. And vide ante 36. *Gardiner v. Forbes.*

Church *versus* Jason, Bart.

Cooke.

A Motion to stay Judgment in an Action of Debt on a Bond, the Declaration being in English, but the Alias dict. in Latin, as in the Bond; and a Rule Nisi was granted; upon shewing Cause it was insisted for the Plaintiff that the Alias dict' is a necessary Description of the Person that entered in to the Bond, and as there might probably be some Variance between his Description therein and the Addition in the Declaration, the Declaration would not be good without it; the Court held it was a good Declaration, and therefore discharged the Rule to shew Cause.

S. C. *Pract. Reg. C.P.* 322. *Notes Pract.* 160.

Motion to set aside Judgment, the Alias dict' being in Latin, as in the Bond, but denied.

Nota; The Court seemed to think that it was not material whether the Alias dict'

were

Cases of Practice in the

Trin. 6 & 7 were inserted or not, and that if an *Alias*
Geo. II. *dict'* be inserted in a Declaration upon a
Specialty, it must agree literally with the
Deed or the Declaration will be bad even
on *Non est factum*.

Harwood *versus* Denny.

Thomson.

Declaration
and Issue of
the same
Term, only
the Plea, Re-
plication, &c.
in the latter
to be paid for.
Post. Rider v.
Somerfield,
Mich. 1733.

A Declaration and Issue of the same
Term, the Plaintiff's Attorney
insisted upon being paid for two Copies
of the Declaration, otherwise he threat-
ened to sign Judgment; to prevent
which, the Defendant's Attorney paid
for both, but afterwards moved in the
Treasury that the Plaintiff's Attorney
should return the Money he received for
one of those Copies; which the Court
ordered accordingly.

Note; *Palmby versus Masters, Trin. 6 &*
7 Geo. II. Cooke, the Court made the like
Rule. See *Notes Pract. 257.*

Court of Common Pleas.

* *Panter versus Coppin*, vid'.

Thomson.

A Motion to set aside Judgment, a Plea having been delivered; it was insisted upon by the Plaintiff's Counsel that the Defendant had pleaded an Outlawry in Bar, but had not pleaded it *sub pede sigilli*, as he ought to have done; but the Court set aside the Judgment, and said if a Plea in Bar is insufficient, the Plaintiff should apply to the Court or demur, and not sign Judgment; for the Court, and not the Party, is to judge whether or no Matters are properly pleaded.

Trin. 6 & 7

Geo. II.

* Page 92

S. C. Notes

Praet. 160.

Judgment set

aside, being

signed after a

Plea of Out-

lawry in Bar,

not pleaded

sub pede sigilli.

Cro. Car. 95.

105.

2 *Vent. 282.*

Morse versus Farnham.

Thomson.

IN this Cause, the Plaintiff had entered an Appearance for the Defendant one Day too soon, and consequently irregular, but the Defendant having received a Declaration, and suffered Judgment to go, and not complaining in Time, the Court discharged the Rule which had been made to shew Cause.

S. C. Praet.

Reg. C. P. 32.

Notes Praet.

162.

Motion to set

aside Judg-

ment denied

because it

came too late.

Ante 47.

Jones v. Mer-

riden.

Ante 69.

Smith v. Jenks.

Post. Grimes

v. Clever.

Mich. 11 G. II.

M

Also

Cases of Practice in the

Mich. 7 G. II.

Alsop versus Bagget.

Cooke.

S. C. Pract.

Reg. C. P. 346.

Notes Pract.

202.

Notice to appear on Process must be for the Effoin-Day.

Vide post. 97.

Jenner v.

Wilkinson.

98. *Green v.*

Watkins. 100.

Loyd v. Beeson and Cort against Turner.

IN this Cause the Court resolved, that on the Copy of the Process which is served upon the Defendant, Notice is to be given to appear on the Effoin-Day, and not on the Appearance-Day.

Note; In this Cause last Term the Court were of Opinion, that the Notice should be for the Appearance-Day, but now reconsidering the Matter, they determined as above.

** Suttle v. Laycon. Mich. 7 G. II.*

** Page 93*

S. C. Pract.

Reg. C. P. 449.

Writ of Inquiry set aside by the Plaintiff, and Costs allowed the Defendant.

Ante 84.

Stanton v.

Winch.

A Motion by the Plaintiff to quash his own Writ of Inquiry, which was executed the Day after the Return; the Defendant insisted upon Costs; the Court refused to grant any Costs, and quashed the Writ of Inquiry, and gave the Plaintiff Leave to sue out another; but on a second Motion by the Defendant, setting forth that he had been at great Expence in defending the Writ, the Court ordered Costs to be paid the Defendant.

Ryder

Court of Common Pleas.

Mich. 7 G II.

Ryder *versus* Somerfield.

Thomson.

UPON a Motion to set aside a Judgment signed for not paying for the Issue, the Defendant alledged the Issue was overcharged; the Court said that the Defendant was to pay instantly so much as was charged upon the Issue; but if he apprehended the same was too much, he might apply to the Court, and they would order the Plaintiff's Attorney to refund; so they held the Judgment to be regular, but afterwards set aside the same, upon Payment of Costs.

S. C. Pract.
Reg. C.P. 230.
Judgment for
not paying for
Issue though
the Plaintiff
had over-
charged it.
Ante 91.
Harwood v.
Denny.

Bond and another *against* Jope.

Cooke.

A Rule was made in Hilary Term last, to bring 63 l. 11 s. 4 d. into Court subject to the Taxation of Mr. Lawrence's Bill, but the Money was not brought in until the 22d of October this Term; the Plaintiff in the mean Time proceeded to Judgment, which Judgment was set aside upon Terms, and afterwards a Plea was pleaded, and a Motion, and Leave given to withdraw

Money not
brought into
Court pursu-
ant to a Rule
obtained for
that Purpose.

Cases of Practice in the

Mich. 7 G. II. withdraw the same, and Judgment given with stay of Execution till a certain Time, which Time being expired, Execution was sent down; and this Term the Plaintiff moved to set aside the Rule for bringing Money into Court, the Defendant not complying with the Rule in due Time; on hearing Counsel on both Sides, the Court stop'd the Plaintiff's Proceedings, but the Defendant was ordered to pay all Costs to this Time.

Note; The Cause was afterwards compromised by Consent of the Parties.

*Page 94 * Kingdom v. Herne and Frost.

Cooke.

S. C. Notes

Pract. 205.

Inquiry set aside for want of Notice to each Defendant.

Sat. 12 G. I.

c. 29.

5 G. II. c. 27.

Reg. Mich. 1.

Geo. II.

A Motion to set aside an Inquiry, because one of the Defendants was not served with Notice of the Execution of the Inquiry. Per Cur'; Where the Proceedings are according to the Act 12 Geo. I. and no Attorney appears, each Defendant ought to have Notice; so the Inquiry was set aside.

Note; *Skinner versus Mannock, Mich. 1736. Cooke, the like Case and Resolution.*

Walton

Court of Common Pleas.

Mich. 7 G. II.

Walton *against* Stanton.

Thomson.

A Motion to set aside a Judgment, because the Warrant of Attorney was given when the Defendant was in Custody, and no Attorney present; a Rule to shew Cause was granted, but on shewing Cause, the same was discharged, it appearing the Defendant himself was an Attorney.

*S. C. Notes
Pract. 28.
Judgment by
Confession,
good, the De-
fendant tho' in
Custody being
an Attorney.
Post. Carter
v. Smith, Hil.
9 Geo. II.*

Mountstephen *versus* Templer.

Cooke.

A Motion to set aside a Judgment, which had been signed for want of paying for the Issue; it appeared that the Issue was tendered in the Country, and not to the Agent in Town; the Court declared those Things should not be transacted in the Country, but by the Agents in Town, neither should Declarations or any other Pleadings be delivered in the Country; and the Judgment was set aside.

*Judgment set
aside tho'
signed for not
paying for the
Issue, it being
tendered in
the Country.
Post. Addeley
v. Dixie, Trin.
1734.
Evans v.
Flack, Mich.
1734.
Taylor v.
Lawson, Mic.
1735.*

Cases of Practice in the

Mich. 7 G. II.

Lazonby *against* Bradley.

S. C. Notes
Pract. 165.
Judgment
signed within
eight Days af-
ter Declaration
delivered to
the Attorney.
Reg. Cur' Mic.
3 Geo. II.
East. 3 G. II.
Ante 85.
Godfrey v.
Matthews,
Post. Charlton
v. Hankey,
Mich. 1735.

Cooke.

IN this Cause Judgment was signed before the Expiration of eight Days after Declaration delivered to the Attorney, the Defendant living above twenty Miles from London; the Court said it was their Intent that the late Rules should extend to Declarations delivered to Attornies, as well as to Declarations filed in the Office de bene esse, and Notice thereof delivered to Defendants; and set aside the Judgment.

* Page 95

* *Blaxland v. Burgefs, Widow.*

S. C. Pract.
Reg. C.P. 301.
Where a De-
fendant pleads
with a *Profert*,
Oyer must be
given in a rea-
sonable Time
after Demand,
or Judgment
may be signed.
See ante 72.
Hammond v.
Homer,
Ante 81.
Theedham v.
Jackson. Ante 73. *Littlebales v. Smith,* & post *Simpson v. Duffield,*
Mich. 1737.

THE Declaration was filed the 3d of November, and Notice thereof and Rule to plead given the same Day, on the 12th the Defendant pleaded a Release with a *Profert* in Cur'; the same Day the Plaintiff demanded Oyer in Writing, and on the 14th in the Afternoon signed Judgment for want of Oyer; the Question was, whether the Plaintiff could sign his Judgment on the Defendant's not giving Oyer according

Court of Common Pleas.

According to the Demand notwithstanding the Plea? Upon this Point the Court were unanimously of Opinion, that in Case a Defendant pleads with a Proferre, and Oyer is demanded, and not given in a reasonable Time, the Plaintiff may sign his Judgment, it being esteemed as no Plea till verified by Oyer; and they held the Judgment to be regular. *Mich. 7 G. II.*

Charlton *against* Hankey and Alfop.

Cooke.

A Motion to set aside a Judgment, because the Plaintiff did not stay four Days for a Plea after the eight Days for Appearance were expired, but signed his Judgment the same Day he entered the Appearance for the Defendant, which was the 9th Day: But it appearing that the Declaration had been delivered *de bene esse*, and that the Rule to plead was out before the Appearance entered, the Court denied the Motion. *S. C. Pract. Reg. C.P. 148. Notes Pract. 167. Judgment good on a Declaration delivered de bene esse. Reg. Cur' Mic. 3 Geo. II. Ante 68. Sellar v. Faceby. Ante 79. Morse v. Farnham, Appearance and Notice to appear. Ante 47. Jones v. Meriden.*

Nota; By the Statute of 12 Geo. I. cap. 29. it is Enacted, That if such Defendant or Defendants shall not appear at the Return of the Process or within four Days after such Return, it shall be lawful for the Plaintiff upon Affidavit, &c. to enter a common Appearance; *M 4*

Cases of Practice in the

Hil. 7 Geo. II. *pearance*; and under this Statute it was the Practice for the Plaintiff's Attorney to enter the Defendant's Appearance the next Day after the Appearance Day.

But by the Statute 5 Geo. II. cap. 27. *The Defendant or Defendants* (a Copy of the Process in English having been served as by the said Act is directed) *shall appear at the Return thereof, or within eight Days after such Return.*

*Page 96

* Price and another *against* Warren.
Hil. 7 Geo. II. 1733.

Cooke.

Motion to put off Trial denied.

Ante 81.

Welberry v. Lister.

A Motion to put off a Trial, upon the Defendant's Attorney's Affidavit that T. M. was a material Witness, and was beyond York, and that he could not have him in London Time enough to give his Evidence upon the Trial; the Court said the settled Rule is, that the Defendant must make Affidavit himself, without which the Trial is never put off; therefore the Motion was denied.

Hall versus Bilby.

To set aside Process executed in a Franchise.

A Motion to set aside the Service of Process in a peculiar Franchise, the same not having been served by the proper

Court of Common Pleas.

proper Officer ; whereas the Statute *Hil. 7 Geo. II.*
of 5 Geo. II. cap. 27. says, That in pecu-
liar Franchises and Jurisdictions the proper
Officer shall execute the Process ; but the
Court held that this Process was well
served, for the Statute does not make
such Service of Process void, nor
would an Execution, executed in such
Franchise, tho' not by the proper Offi-
cer, be void ; but the Statute only in-
tended to save the Right to such Offi-
cers, who may, if they are injured,
take such Remedy as they shall be ad-
vised, but such Service is no ways
impeached by the Statute.

Hartly *versus* Varny.

Cooke.

A Motion for Oyer ; but it appearing
that the Rule to plead was out,
the Court denied the Motion, for Oyer
ought to be demanded before the Rule
is out.

S. C. Pract.
Reg. C.P. 278.
Notes Pract.
230.

A Motion for
Oyer denied,
the Rule being

out. See ante 72. *Hammond v. Horner*, and *Littlehales v. Smith*,
ante 73.

Cases of Practice in the

Hil. 7 G. II.

Martindale *versus* Galloway.

Cooke.

To withdraw
a Plea.

* Page 97

(a) The De-
fendant might
(before any
Replication)

have withdrawn his Special Plea, and pleaded the General Issue without Leave. Ante 67. *Robinson v. Simonds*. And vide post. *Sherlock v. Templer*, Mich. 10 Geo. II. and *Hunt v. Puckmore*, East. 10 G. II.

MOTION for Leave to withdraw a Special Plea of Plene Administravit, and to plead (a) Plene Administravit * generally, which was granted on Payment of Costs; but it was said that if the Defendant had pleaded the General Issue, they would not let him withdraw that, and plead any other Plea.

Pryor v. The Earl of Ilay.

Thomson.

S. C. Pract.
Reg. C.P. 319.
Notes Pract.
150.

A Writ of Inquiry imperfect discharged.

A Declaration upon Promises; the Defendant pleaded double, Non Assumpsit and Non assumpsit infra sex Annos; on the Non assumpsit the General Issue was joined, and to the Non assumpsit infra sex Annos the Plaintiff replied an Original filed; and thereupon Issue of Nul tiel Record was joined; on this last Issue the Plaintiff has Judgment, and an Inquiry was awarded in the Common Form and executed, but no Proceed:

Court of Common Pleas.

Proceedings were had on the first Issue of Non assumpsit, which it was insisted was irregular; for the Record of Nisi prius should have been made up, as well to try the Issue as to inquire of Damages, and the Plaintiff cannot enter a Nolle prosequi on the Non assumpsit, because both the Pleas go to the whole, and both must be determined before the Plaintiff can have Judgment; of which Opinion was the Court, and set aside the Inquiry.

Hil. 7 Geo. II.

Jenner *versus* Williamfon.

Cooke.

A Motion to stay Proceedings for Irregularity because the Process was served with Notice to appear, on the 21st of January, which was on a Monday, whereas it should have been on the 20th tho' Sunday, that being the real Return-Day, a Rule to shew Cause was granted, and afterwards made absolute upon hearing Counsel on both Sides.

Proceedings stayed because Process served with Notice to appear the Day after the Return.

Ante 92.

Allop v. Bagget.

Post. *Green v.*

Watkins.

Post. 100.

Loyd v. Beeson,

and *Cort v.*

Turner.

Paul

Cases of Practice in the

Hil. 7 G. II.

Paul *versus* Gledhill.

A Term's Notice of Inquiry where Judgment is signed above a Year.

Ante 4.

econtra; and ante 66.

Buckson v. Pellow.

* Page 98

V. Reg. Cur' Pas. 13 G. II.

reg. 2.

Thomson.

A Motion to set aside a Writ of Inquiry, because executed above a Year after Interlocutory Judgment, and a Term's Notice not given; the Court set aside the Inquiry, * because a Term's Notice should have been given; and so in all Cases of Notices where there have not been any Proceedings within a Year, a Term's Notice must be given.

Senhouse *against* Barnes.

Cooke.

The Charges of a Witness allowed to be paid, tho' rejected by the Judge of Assize.

A Motion that the Prothonotary might not allow the Charge of one Trowell going from London to Carlisle to be a Witness, because the Judge would not suffer him to be examined, being of Opinion that he was not a material Evidence; but the Plaintiff having sworn that he was a material one, and the Attorney likewise swearing that he was advised by his Counsel that Trowell was a material Witness, the Court ordered the Charge of that Witness to be allowed.

Green

Court of Common Pleas.

Hil. 7 G. II.

Green *versus* Watkins.

Borret.

A Motion to stay Proceedings, because the Process which was returnable in Octab' Hil', was served with Notice to appear on the 21st of January, which was Monday; it was insisted upon by the Plaintiff's Counsel, that the Sunday being no Law-Day, it was impossible for the Defendant to enter his Appearance on that Day, and therefore it must be understood that the Legislature intended that Notice should be delivered to appear on such a Day, when the Defendant could enter his Appearance; the Court took Time to consider, and soon after declared, that Notice ought to be given to appear on the Escoin-Day, whether Sunday or not, the Act of Parliament of the Fifth of his present Majesty expressly directing the same, and for that Reason Proceedings were staid.

In Notices to appear, the Day of the Return must be inserted, tho' it happen to be on a Sunday.
Stat. 5 G. II. cap. 27.
Post. 100.
Loyd v. Beeston.
Ante 97.
Jenner and Williamson.
Ante 92.
Allop v. Baggot.

Roberts

Cases of Practice in the

East. 7 G. II.

Roberts v. Downes, an Attorney.
East. 7 Geo. II. 1734.

S. C. Praet. Borret.
Reg. C.P. 399.

Motion to re-
spite Trial
must be made
two Days be-
fore Trial.

ON a Motion to put off a Trial, it was declared by the Court, That all Motions for respiting Trials should be made two Days at least before the Day of Trial, * and in the present Case, the Motion being made but one Day before the Trial, it was denied.

* Page 99

Post. Agar v.

Hill. Trin. 1734. Ante 81. Welberry v. Lister.

Bennet against Sampson.

Cooke.

S. C. Praet.

Reg. C.P. 436.

Notes Praet.

291.

Writ quashed

being tested

out of Term.

A Motion to quash a Capias ad respondendum, because the Writ was tested the 13th of February, being no Day in Bank; a Rule Nisi was granted, and on shewing Cause the Writ was ordered to be quashed.

Hannaford

Court of Common Pleas.

East. 7 G. II.

Hannaford *against* Holman.

Borret.

A Motion to set aside a Writ of Inquiry for Incertainty in the Notice; the Notice given was, that the Writ would be executed at a certain Hour, (mentioned in the Notice) or as soon after as the Sheriff could attend; the Court unanimously agreed that this Notice was irregular for the Incertainty, and granted a Rule to shew Cause, which was afterwards made absolute.

S. C. Pract.

Reg. C. P. 134.

Notes Pract.

207.

To set aside an Inquiry for want of Certainty in the Notice.

Post. Squire v.

Almond, Hil.

1734.

Lamarque v.

Newman,

Trin. 1736.

Right *against* Wrong, in Ejectment.

Cooke.

A Motion was made in this Cause that the Tenant (who refused to authorise his Landlord to defend for him) might be obliged to make a Defence, upon the Landlord's giving Security to indemnify him, or that the Landlord might be made a Defendant instead of the Tenant in Possession, in order that the Title might be tried; but the Court refused to grant the Motion, but enlarged the Time for Appearance.

Motion that Landlord may appear for Tenant without Consent, giving Security.

Ante 73.

Webb v. London.

But now see the Stat. 11 G. II. cap. 19.

Arnold

Cases of Practice in the

East. 7 G. II.

Arnold *against* Thomson.

Borret.

Full Costs in
Trespas for
chasing Plain-
tiff's Sheep.

*Ante Smith-
send v. Long,*
2.

Bett v. Nichols,
and *Rofiter v.*

Bolting, 24.

*Parke v. Da-
vis,* 49.

Carth. 225.

IN Trespas for chasing the Plain-
tiff's Sheep, whereby ten Ewes and
ten Lambs were greatly damaged, a
Verdict was found for the Plaintiff, but
Damages under 40 s. and no Certifi-
cate; the Question was, whether the
Plaintiff should have full Costs? Per
Cur', this is a Damage done to a Per-
sonal Chattel, therefore the Plaintiff is
intitled to his full Costs.

* P. 100

* Lloyd *against* Beeston.

S. C. Notes

Pract. 207.

Notice to ap-
pear on *Sun-
day* being the
Return-day,
good.

PROCESS was served on the De-
fendant with Notice to appear on
the Sunday, being the Effoin-Day, which
the Court held good Notice, and dis-
charged the Rule to shew Cause.

Ante 98. *Green v. Watkins.* *Ante* 97. *Jenner v. Williamson.*

Cort *against* Turner.

Borret.

Process served
without any
Notice to ap-
pear, void.

Vide *Loyd v.*
Beeston the pre-
ceding Case.

THE Defendant having been served
with a Copy of Process, without
any Notice thereunder pursuant to the
Act of 5 Geo. II. he moved the Court to
stay

Court of Common Pleas.

stay the Proceedings for that Irregularity; and a Rule to shew Cause was granted, which was afterwards made absolute. *East. 7 G. II.*

Waddington *against* Fitch.

Cooke.

DEBT on a Sheriff's Bond taken on an Attachment out of Chancery; upon a Demurrer, the Question was, Whether a Sheriff could take such a Bond or not? The Court gave Judgment for the Defendant, and said that a Sheriff cannot take a Bail-Bond upon any Attachment for a Contempt. *No Bail Bond on an Attachment out of Chancery. Ante 14. Field v. Walford.*

Halsal *against* Wedgwood.

Cooke.

A Motion for Judgment in Ejectment, on the Demise of Lord Leigh; it appeared by the Affidavit that the Depo-
nent tendered the Declaration to the Tenant in Possession, but he refused to receive it, and threatened to shoot him; upon which the Depo-
nent, having acquainted the Tenant with the Contents of the Declaration and the Subscription, threw the Declaration on the Ground and left it; and by all the Judges
S. C. Pract. Reg. C P. 166. Notes Pract. 114. Declaration in Ejectment left on the Premises, Tenant refusing to take it and threatening to shoot the Person who served it, and held a good Delivery.

Cases of Practice in the

East. 7 G. II. Judges it was held to be a good Service.

* P. 101. * Williams v. Jones and another.

*S. C. Pract.
Reg. C.P. 397.
Notes Pract.
208.*

*Nonfuit on
Trial by Pro-
viso.*

*Ante, Jesus
College
v. Vaughan,
63.*

*Post. Swale v.
Leaver, Mich.
9 Geo. II.*

*Jones v. Her-
gest, Mich. 8
Geo. II.*

A Motion made, and a Rule to shew Cause, why a Nonsuit at the Sittings on a Trial by Proviso should not be set aside; it was urged by the Plaintiff that the Defendant could not carry down the Cause by Proviso till a full Term intervened after Issue joined; but the Court said the standing Practice was, to make up the Record by Proviso, upon one Default being made, the next Term after Issue joined, and discharged the Rule to shew Cause.

Note; It was likewise objected that the Plaintiff was out of Court by suffering a Nonsuit, and so could not now be admitted to move the Court; *Sed vide post Swale versus Leaver, Mich. 9 Geo. II.* where this Point is settled otherwise.

Walthoe

Court of Common Pleas.

*Trin. 7 & 8
Geo. II.*

Walthoe against Harrison an At-
torney.

Thomson.

A Motion after Trial, to amend the Jurata in the Record of Nisi prius by making the Return in the Award of the Habeas Corpora a Day certain instead of a general Return; the Court ordered the Plaintiff to shew Cause; afterwards the Rule was discharged, the Court saying that it need not be amended, for it is already good, the same being remedied by the Statutes of Jeofail; but on further Consideration the Judges gave their Opinion severatim, and declared that the Jurata might be amended by the Habeas Corpora, and ordered the same accordingly.

*S. C. Pract.
Reg. C. P. 22.
Notes Pract. 8.
Leave to a-
mend the Ju-
rata by ma-
king the Ha-
Corp' returna-
ble at a Day
certain.*

*Stat. 4 G. II.
c. 26.
5 G. II. c. 27.
32 H. VIII.
c. 30.
18 El. c. 14.
16 Car. II.
c. 8.*

*4 & 5 Ann. c. 16. Carth. 506. Cro. Car. 275. 1 Danv. Abr.
334, 335.*

Adderley against Dixie. *Trin. 7
& 8 Geo. II.*

Cooke.

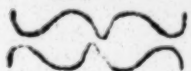
A Motion in the Treasury by M. Eadnal, Agent for the Defendant's Attorney, for Leave to plead a Tender, on a Declaration delivered in the Country the Day before the Effoin-Day

*Declaration
delivered to
the Attorney
in the Coun-
try, not good.*

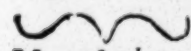
Cases of Practice in the

Trin. 7 & 8

Geo. II.



* *P. 102.*



Mountstephen
v. Templer,

94.

Evans v.
Fleck, Mich.

1734.

Taylor v.
Larson,
Mich. 1735.

of this Term; the Judges were unanimously of * Opinion, that a Declaration delivered in the Country to an Attorney appearing for the Defendant was not good, but it should have been delivered to the Agent in Town, and they made a Rule for the Plaintiff to shew Cause why Proceedings on such Declaration should not be stayed, and why he should not deliver a new Declaration. On the Plaintiffs shewing Cause it was ordered by Consent of the Agents on both Sides, that the Rule should be discharged, and the Defendant should be at Liberty to plead a Tender as of Easter Term last.

Rye against Crossman.

Cooke.

S. C. Notes

Pract. 329.

Verdict set aside, no Issue being joined by the Plaintiff.

A Motion to set aside a Verdict on two Objections: First, Because it did not appear by the Copy of the Issue delivered, that the Plaintiff had joined Issue with the Defendant, by putting himself on the Country. And Secondly, For a Variance in that Respect between the Issue and the Record of Nisi prius, the Record being made right.

The Court granted a Rule to shew Cause, and afterwards on hearing Counsel on both Sides, the Verdict was set aside, the Defendant having made

Court of Common Pleas.

made no Defence on the Trial, he re-
lying upon the above Objections; but
by Consent the Cause was directed
to be tried the Sitting after Term.

*Trin. 7 & 8
Geo. II.*

Pigott, Widow, v. Charlewood.

Cooke.

THE Defendant having been taken
in Execution, while he was at-
tending the Execution of a Writ of
Inquiry, the Court was moved that
he might be discharged, which was or-
dered accordingly upon hearing Coun-
sel on both Sides.

Attorney's Pri-
vilege.

*Ante, Garden
v. Sheers,
60.*

*Griffith v.
Brown, 64.
Post. Morley
v. Grub, 104.
Newman v.*

Harrison, East. 10 Geo. II.

Blackhall against Gould.

A Motion to stay Proceedings be-
cause the Attorney's Name was
not put to the Copy of the Process
served upon the Defendant, as the Act
of 2 Geo. II. cap. 23. for the better Re-
gulation of Attornies and Solicitors,
required; the Court denied the Motion
because it did not concern the Parties
so as to make the Process void, but on-
ly the Attorney who sued it out, who

S. C. Pract.

Reg. C.P. 441.

Motion to set

aside Process,

the Attorney's

Name being

not put to it.

Post. Morley

v. Johnson,

Trin. 1734.

See Stat. 13

Geo. II. c. 13.

Cases of Practice in the

Trin. 7 & 8 might be censured for not pursuing the
Geo. II. Direction of the Act.

* P. 103.

* Smith *against* Wintle.

Borret.

S. C. Pract.
Reg. C.P. 354.
Notes Pract.
288.

What Service
good where
Defendant ab-
sconded.

A Motion to stay Proceedings, no Writ being regularly served; the Court granted a Rule to shew Cause, and on shewing Cause it appeared by the Plaintiff's Affidavit, that the Defendant absconded and was hard to be met with, and therefore the Plaintiff watched him, and saw him go into a House and shut the Inner Door after him; upon which the Plaintiff followed him, and thrust the Copy of the Writ into the Room after him, which the Court held to be good Service, and discharged the Rule for shewing Cause.

Hill, Esq; *against* Jefferys, Esq;

Thomson.

Motion for
Trial at Bar
in an Action
for a Criminal
Conversation.

The like Mo-

tion cited to have been granted in the King's Bench, in the Case of
Sir John Germain.

A Motion for a Trial at Bar, the Action being for Criminal Conversation, the Damages being laid in the Declaration

Court of Common Pleas.

Declaration to a large Sum of Money, and a great Number of Writ-
n^{es} to be examined; the Court
granted a Rule to shew Cause; which
was afterwards made absolute.

*Trin. 7 & 8
Geo. II.*

Smith *against* Roe.

Thompson.

A Motion for Leave to plead Antient
Demesne, but denied, because
such Plea is to the Jurisdiction of the
Court, and ought to be pleaded with-
in the first four Days of the Term af-
ter the Declaration delivered or left in
the Office, as other Pleas in Abate-
ment.

*S. C. Pract.
Reg. C. P. 2.
Notes Pract.
232.
Plea of Anti-
ent Demesne
ought to be
pleaded with-
in the first four
Days.
Ante 43, 63.*

Irwin *versus* Goldsmith.

ONE Ingram a Quaker was return-
ed on a Jury, and refusing to be
sworn was fined 40 s. on the Stat. 3
Geo. II. cap. 25. by the Lord Chief Ju-
stice Eyre; it was now moved in Court
and insisted, that by the Statute of 7 &
8 W. III. cap. 34. sec. 6. a Quaker could
not serve upon any Jury, and the last
At says, if they don't appear, they
shall * be fined, whereas this Quaker
did appear and offered to take his
Affirmation, but that could not be ta-

*S. C. Pract.
Reg. C. P. 247.
A Motion to
discharge a
Quaker's Fine
for not serving
on a Jury.*

** P. 104*

Cases of Practice in the

*Trin. 7 & 8
Geo. II.*

4 Mod. 259.

ken, because the last Act directs the Jury to be sworn. Cur' Advisar'; the Court afterwards delivered their Opinions seriatim in relation to this Matter, when it was held by Eyre, Chief Justice, Denton and Reeves, Justices, (Mr. Justice Fortescue having some Doubt) that Quakers are not exempt by any Act of Parliament from serving on Juries, and therefore if they will not serve they must be fined; but it was said a Quaker might be excused, by a proper Application to the Sessions from being named as one of the Jury.

Gower versus Heath.

Cooke.

Motion to
set aside his
own Verdict
for Smallness
of Damages.

AN Action for scandalous Words spoken of the Plaintiff by the Defendant; Issue and Verdict for the Plaintiff, but the Jury having given but 1 s. Damage, the Plaintiff now moved for a new Trial; the Court refused to grant a Rule, there being no Precedent of a Verdict being set aside by Reason of the Smallness of Damages, though frequent for excessive Damages.

Morley

Court of Common Pleas.

Morley *against* Grub.

Trin. 7 & 8
Geo. II.

Thomson.

UPON a Motion on the Behalf of Mr. Forrest to be discharged out of Custody, he having been taken on an Execution as he was returning from Mr. Thomson's Office, where he had been attending upon the Taxation of Costs; in this Cause a Rule Nisi was granted; but upon shewing Cause it appeared that Mr. Forrest had left a Pledge in the Bailiff's Hands. The Court held that he had thereby submitted to the Arrest, and waived any Benefit of his Privilege, and therefore they discharged the Rule which had been made for shewing Cause.

Attorney arrested by giving Security waived his Privilege.
Ante 60, 64, 102.
Post. Newman v. Harrison, East. 11 G. II.

Swain *against* Girdler, Serjeant at Law.

Borret.

AN Action brought by Bill against the Defendant for Work done, the Defendant pleads in Abatement that he ought to be sued by Original, and not by Bill; on this a Demurrer was joined; and after many Arguments and Cases cited, the Court said the Case of a Serjeant and Prothonotary's Clerk

Whether a Serjeant shall be sued by Bill or Original.

Cases of Practice in the

Trin. 7 & 8 *Geo.* II. Clerk are upon the same Foot, nei-
ther of them being bound to Perso-
nal Attendance, as Prothonotaries *
and Attornies are, so that he ought to
have been sued by Original; and there-
fore the Court gave Judgment for the
Defendant that the Bill should abate.
* P. 105
1 *Keb.* 440.
2 *Lev.* 129.
Hardres 317.
Mich. 10 *W.* III. 316. *Baker* against *Swindel.* *Rastel* 178. 2 *Med.*
296, 298. *Bro. Abr.* 21. 1 *Sid.* 64. 1 *Cro.* 84.

Agar against Hill.

Cooke.

No Motion to
be made for
putting off
Trial unless
made two
Days before
Day of Trial.

A Motion to put off a Trial, but de-
nied, because all such Motions are
to be made at least two Days before
the Day of Trial, and this Motion
was made only the Day before.

Roberts v. Downs, 98. *Welberry v. Lister*, 81.

Adkin against Worthington, an At- torney.

Cooke.

S. C. Pract.
Reg. C. P. 35.
Nature of
Action omit-
ted in the Pre-
amble of the
Bill, yet good.
*Post. Sidebot-
ham v. Frith,*
East. 9 *G.* II.

THE Defendant demurred to the
Declaration, and for Cause shew'd
that the Plaintiff, in setting out the
Preamble to the Bill, had not mention-
ed the Nature of the Action; upon the
Argument, the Court declared that the
Cause of Action was sufficiently set forth
in the Bill, and therefore no Matter if
it

Court of Common Pleas.

it was omitted in the Preamble; quod *Trin. 7 & 8*
constat clare non opus est verificare, and *Geo. II.*
therefore gave Judgment for the Plain-
tiff upon the Demurrer.

Note; *Darker* against *Ward*, *Trin. 1734.*
Cooke, Upon the same Point the Court re-
solved accordingly.

Jamet against Voyer.

Cooke

A Motion to stay Proceedings, the
Writ being returnable on a Sun-
day, and a Copy thereof served with
Notice to appear upon the Monday af-
ter, whereas the Effoin-Day was on
the Sunday; the Defendant did not
complain to the Court of this Irregu-
larity, till after Notice of a Declara-
tion was served, tho' before Judgment
signed, which it was insisted was too
late; but the Court said, since he came
before Judgment signed, it was soon
enough; for till serving of the Notice
of the Declaration he could not tell
* whether the Plaintiff would proceed
upon such irregular Service of the
Process; and therefore Proceedings
were stayed.

S. C. Pract.

Reg. C.P. 355.

Notice on
Process to be
for Effoin-day
tho' Sunday.

See ante 92,

97, 89, 100.

Chalklen v.

Johnson, Hil.

8 *Geo. II.*

Irregularity in
the Notice on
Process may
be complained
of, any Time
before Judg-
ment.

* P. 106

Post Grimes v.

Clewer, Mich.

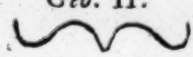
11 *Geo. II.*

Cooke

Cases of Practice in the

Trin. 7 & 8

Geo. II.

 *Cooke and another against Sankey.*

Borret.

S. C. Pract.

Reg. C. P. 64.

Notes Pract.

54.

Bail in Trespass for entering Plaintiff's Ground and taking away his Hop-Poles.

Stat. 12 G. I. c. 29.

A Motion for a common Appearance, the Plaintiff's Affidavit set forth, that the Defendant entered the Plaintiff's Hop-Ground, and did take and carry away several Thousands of Hop-Poles, to his Damage 20 l. The Court said the Act of Parliament did not distinguish Actions, but that the Plaintiff might hold to Bail in Trespass, as well as in any other Action.

Eason and his Wife against Wilkins and his Wife.

Cooke.

Issue amended.

1 Roll. 210.

Post Walpole

v. Robinson,

Mich. 11 G. I.

A Motion made in Easter Term last to arrest the Judgment in Assault and Battery; there had been two several Pleas of Son Assault, and Issue was joined in the last, but left out in the first. The Court granted a Rule to shew Cause, which was now discharged on hearing the Plaintiff's Counsel, because it appears to be the Clerk's Mistake, and amendable by the Statutes of Jeofail, and besides, as the Issue is joined in the latter Plea, that may also have Reference to the First.

Note;

Court of Common Pleas.

Note; *Lyne* against *Green*, the like Re- *Trin.* 7 & 8
solution in an Action on two Bonds, If- *Geo.* II.
sue joined as to one Bond and not in the
other.

Morley against Johnson.

Borret.

A Motion to stay Proceedings upon
Process delivered without the Fi-
lazer's Name being put thereto. Cur',
the Act of Parliament does not require
it, so no Rule was granted.

Process deli-
vered without
Filazer's
Name.
Blackhall v.
Gould, Trin.
1734. 102.
Stat. 2 G. II.
c. 23.

Camp, qui tam, &c. against Gale.

Cooke.

A Motion in Arrest of Judgment the
last Day of the Term without
Notice of the Motion, and a Rule to
shew Cause was granted; but the Court
said, that no Motion * in Arrest of
Judgment should hereafter be made,
without Notice, on the last Day of
the Term.

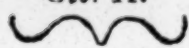
No Motion in
Arrest of Judg-
ment the last
Day of the
Term without
Notice.

* P. 107

Cases of Practice in the

Trin. 7 & 8

Geo. II.



Eglesfield against Anderson.

Cooke.

A true Copy
of the Libel
ought to be
produced up-
on Motion for
a Prohibition.

A Rule obtained to shew Cause why a Prohibition should not be granted, but upon shewing Cause it was insisted, that no authentick Copy of the Libel was produced, which the Court said ought to be done, and it must be proved by Affidavit to be a true Copy, and for want of such Affidavit, the Rule was discharged.

Langdon against Vinicombe and others.

Cooke.

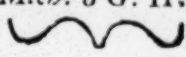
*S. C. Pract.
Reg. C.P. 102.
Costs on Verdict for Defendants, tho' some let Judgment go by Default.
1 Lev. 63.
Porter v. Harris.*

AN Action upon the Case on several Promises; some of the Defendants pleaded Non Assumpsit, and others let Judgment go by Default; the Defendants, who pleaded had a Verdict. It was moved that the Defendants should have Costs on the Verdict, the Plea going to all the Declaration, the Court ordered Costs to be taxed accordingly on the Verdict.

Harding

Court of Common Pleas.

Mich. 8 G. II.



Harding *against* Greensmith, on the
Demise of Mary Baker, Widow.

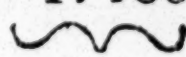
Borret.

A Motion for Judgment in Ejectment, upon Affidavit that the Declaration was delivered to the Wife of A. B. and to B. T. and to each of them, and swears that both or one of them is Tenant in Possession; the Motion was denied for Uncertainty in the Affidavit.

Motion for Judgment in Ejectment denied for Uncertainty in the Affidavit.

Note; *Birbeck against Hughes*, Hil. 7 Geo. II. the like Motion denied for Uncertainty in the Affidavit, which was *That the Deponent did serve A. B. or C. his Wife.*
Notes Pract. 113, 116.

* *Thredder against Traviss.* Mich. * P. 108
8 Geo. II.



Cooke.

A Motion was made the 28th of October this Term, for Judgment in Ejectment on a Proceeding pursuant to the late Act of Parliament, Stat. 4 Geo. II. c. 28. the Notice was to appear the Beginning of the then next Term. The Court said the Beginning of the Term was uncertain, and therefore gave

S. C. Notes Pract. 116.

Notice to appear the Beginning of next Term, Time to appear enlarged.

Cases of Practice in the

Mich. 8 G. II. gave the Tenant till the 6th of November to appear and plead.

Hewit *against* Powel.

Cooke.

Ha' Corp' returnable on a Sunday, Commitment the next Day.
The King v. Haryes, Hil. 8 Geo. II.

AN Habeas Corpus was sued out to bring the Defendant into Court, returnable in one Month after St. Michael, which was on a Sunday. The Court said the Defendant might be brought up within four Days after the Return; the next Day the Defendant was committed.

Day's Case, the same Term.

Cooke.

A Prisoner brought up before the Return of the *Ha' Corp'*; the Court would not receive him.

William Day was brought up the 4th of November by Habeas Corpus, directed to the Sheriff of the County of Somerset, returnable the last Day of the Term; the Court would not receive him before the Return of the Writ.

Carruthers

Court of Common Pleas.

Mich. 8 G. II.

Carruthers *against* Lamb.

Cooke.

IN an Action of Trespas for an Assault, and for tearing and spoiling the Clothes of the Plaintiff with which he was then clothed; a Verdict was found for the Plaintiff and Damages, and 40 s. Costs given by the Jury. It was questioned by the Prothonotary what Costs he should allow the Plaintiff, therefore a Motion was made in the Treasury for the Direction of the Court, who all agreed that full Costs should be allowed, altho' no Certificate was given by the Judge who tried the Cause; for it is not an * Action of Assault and Battery within the Statute of 22 & 23 Car. II. c. 2. for the Tearing and Spoiling the Plaintiff's Clothes, which is joined with it, is founded on an Injury to his Property, and the Verdict is general for the Plaintiff.

Costs in Trespas for tearing and spoiling the Plaintiff's Clothes.

1 d. Ante 24, 49.

Vide post.

Denny v.

Wigg, Mich.

10 Geo. II.

* P. 109

Cases of Practice in the

Mich. 8 G. II.

Evans *against* Flack.

Cooke.

Motion to set aside Judgment and Inquiry, where the Cause was transacted in the Country, denied.

Ante 94.

Mountstephen

v. Templar,

Ante 101.

Adderley v.

Dixie.

Taylor v. Larvson, Mich. 1735.

ON a Motion to set aside a Judgment and a Writ of Inquiry, it was insisted that the Matter was transacted in the Country against the settled Practice of the Court; but on hearing Counsel on both Sides, the Court declared, that as this was done by Consent, and as the Matter had proceeded so far, they would do nothing in it, and discharged the Rule to shew Cause.

Marsh *versus* Carter.

Thomson.

S. C. Pract.

Reg. C. P. 37.

Ante 27.

Clarke v. God-

frey.

A Motion was made to tax the Plaintiff's Bill of Costs, but denied, the Defendants having given a Bond for the Money.

Court of Common Pleas.

Mich. 8 G. II.

Pool against Broadfield.

Thomson.

ON a Motion by the Plaintiff for Leave to quash a Scire Facias, the Defendant prayed that Costs might be allowed him, he having entered an Appearance; but he not having pleaded, the Court declared he could have no Costs, and that the Plaintiff may waive his Scire Facias, without paying Costs, at any Time before the Defendant has pleaded.

Scire Facias
quashed without paying Costs.

Ante 74.

Huer v.

Whitehead.

Stat. 8, 9 W. III.

* Jones against Hergest in Ejectment
on the Demise of John Thomas.

* P. 110

Cooke.

A Motion by the Defendant to set aside a Nonsuit, for not confessing Lease, Entry and Duster, on account of a Variance between the Issue delivered and the Record of Nisi prius. For the Plaintiff it was objected that the Cause was at an End by the Nonsuit; the Court said if the Defendant had confessed Lease, Entry and Duster, that would not have been making a Defence, so as to have hindered him from taking Advantage of the Variance;

S. C. Notes

Pract. 116.

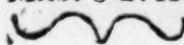
Motion by Defendant, to set aside Nonsuit, for not confessing Lease, Entry and Duster.

Post Swale v.

Leaver Mich.

1735.

Cases of Practice in the

Mich. 8 G. II.  **ance**; but as in this Case the Possession would be altered without trying the Title, they set aside the Nonsuit, but upon Payment of Costs.

Misaubin *against* Costa.

Cooke.

Motion to set aside a Judgment on a Nonsuit, signed after the Plaintiff's Death.

See Carth. 149.

ON the Trial of this Cause the Plaintiff was nonsuited, but died before the Day in Bank, and the Defendant signed his Judgment after the Plaintiff's Death; and now it was moved to set aside this Judgment, suggesting that it was not helped by the Statute of the 18 of Car. II. cap. 8. which enacts, That the Death of either Party, between Verdict and Judgment, shall not be alledged for Error, if Judgment on such Verdict be entered within two Terms after such Verdict; this being a Nonsuit, the Question was, Whether the Act does not extend to Nonsuits as well as Verdicts; the Court declared that this was not an Irregularity, but Error, and to be reversed by Writ of Error only, and therefore denied the Motion.

Court of Common Pleas.

Hil. 8 G. II.

Cope's Case.

Cooke.

I Saac Cope brought up by Habeas Corpus, returnable on the Morrow of St. Martin, at his own Instance, but refusing to pay the Gaoler's Fees, the Court remanded him.

Prisoner remanded for not paying the Gaoler's Fees.

* Gorman against Boyle.

* P. III

Cooke.

A Motion to set aside a Verdict because only eight Days Notice of Trial was given, whereas the Defendant's Habitation is in Ireland; the Court said if the Defendant's Habitation be forty Miles from London, he must have fourteen Days Notice of Trial, let him live where he will, and therefore set aside the Verdict.

S. C. Pract. Reg. C P. 388. Fourteen Days Notice of Trial, the Defendant living in Ireland. Reg. Cur' 1654. sec. 21.

Gray against Saunders. Hil. 8 G. II.

Borret.

THE Plaintiff having entered an Appearance for the Defendant according to the late Statute, filed a Declaration against him, and gave a Rule to plead, and some Days after served

No Rule to plead till Notice of the Declaration. Ante 99. Law v. Revell.

Cases of Practice in the

Hil. 8 Geo. II. served the Defendant with Notice of the Declaration; the Court held that the Rule was irregular, for it should not have been given till after the Notice was served, the Declaration being well delivered, from the Time of Notice only.

Mathews *against* Wheat.

Cooke.

Time to re-join Issuably, the Party may Demur.

AFTER Time given to rejoin Issuably, the Party may demur if he will; the Reason of giving Time, is that the Party may consider whether he will demur or not.

* P. 112 *

Costar and his Wife *against* Standen.

Thomson.

Venue not changed after Plea pleaded. Ante 33.

Carter

v. Dormer,

Sabor v. Pott,

57.

Treasure v

Wright, 57.

Post. Ball v.

Young, Hil. 9 Geo. II. See Lucas v. Rudd, Mich. 10 Geo. II.

A Motion to change the Venue, and a Rule granted to shew Cause; upon shewing Cause it appeared, that the Defendant had pleaded before he applied to change the Venue; the Rule was discharged for that the Venue is not to be changed after the Defendant has pleaded.

Newman

Court of Common Pleas.

Hil. 8 G. II.

Newman *against* Butterworth.

Thomson.

A Motion to stay Proceedings against Bail upon the Recognizance till the Writ of Error be determined; the usual Practice has been, if an Action be brought against the Principal on the Judgment, the Plaintiff may proceed to Judgment, tho' a Writ of Error be depending; but this Case being against Bail, if the Plaintiff should obtain Judgment, the Bail could not render the Principal; and therefore Proceedings were staid.

Note; In Easter Term 1735, in a Cause, Clark against Baker, the like Resolution was made.

S. C. Pract.
Reg.C.P.82.
Notes Pract.
55.
Proceedings
stayed on an
Action upon
the Recogni-
zance, a Writ
of Error be-
ing depend-
ing.
Ante 24.
Covert v Allen,
econtra.

The King *against* Haryes.

Cooke.

AN Attachment on a Contempt, returnable Wednesday after the Octave of St. Hilary, which was the Day before the Term.

A Motion in the Treasury for the Sheriff to bring in the Body, upon a Return, that he had taken the Body; it was insisted that tho' the Return of

S. C. Pract.
Reg.C.P.437.
Notes Pract.

24.
Sheriff to
bring in the
Body on an
Attachment
for a Con-
tempt, return-
able the Day
before the
Term.
Ante 108.
Powell's Case.

Cases of Practice in the

Hil. 8 Geo. II. the Attachment was before the first Day of the Term, yet the Sheriff shall return his Writ any Day within four Days after. The Court made a Rule for the Sheriff to bring in the Body. This Matter was moved again, and a Rule to shew Cause why the Attachment should not be quashed, there being no such * Return. The Rule enlarged to next Term, and then the Writ was quash'd.

Note ; Rooke against Norton, Trin. 10 Geo. II. Cooke. The like Resolution on an Attachment of Privilege.

Hamond against Woolmer.

Thomson.

*S. C. Pract.
Reg. C.P. 116.
Costs taxed
upon a Rule,
to be paid to
an Executor,
after Defen-
dant's Death.*

A Motion to set aside Costs of a Nonsuit taxed upon a Rule of Court; on a Trial at Nisi prius, a Verdict was given for the Plaintiff, subject to the Opinion of the Lord Chief Justice on a Case then made, and if his Opinion should be for the Defendant, then Defendant was to have the Costs of a Nonsuit. His Lordship's Opinion being for the Defendant, Costs of a Nonsuit were taxed upon the Rule, and after this the Defendant died, and the Costs demanded of the Plaintiff by the Defendant's Execu-

tor;

Court of Common Pleas.

toz: It was debated whether an Exe- Hil. 8 G. II.
cutor shall be intituled to, and can make
a proper Demand of these Costs, it
being insisted upon, that that Matter
ought to be reciprocal, for if the Plain-
tiff had died, his Executor would not
have been obliged to pay these Costs.

The Court were of a contrary Op-
inion, and said the Executor was inti-
tled to Costs, and granted an Attach-
ment against the Plaintiff for Nonpay-
ment thereof, but ordered the same not
to Issue, if the Costs were paid in
three Days.

Squire the Elder *against* Almond.

Cooke.

A Motion to set aside a Writ of In- S. C. Pract.
Reg. C.P. 446.
Inquiry set a-
side for want
of sufficient
Certainty in
the Notice.
Ante 99.
Hanasford v.
Holman.
Post. La
Marque v.
Newman,
Trin. 10 G. II.
quiry for the Uncertainty of the
Place in the Notice, which was that
the Writ would be executed at the
Sheriff's Office in Northampton, where-
as it should have been at such a Place,
being the Sheriff's Office, for the De-
fendant might not know nor be able to
find out where the Sheriff's Office was
kept, and the Notice likewise expressed
that the same would be executed be-
tween the Hours of Ten and Two,
whereas it should not have exceeded
two Hours; the Inquiry for both these
Reasons

Cases of Practice in the

Hil. 8 Geo. II. Reasons was set aside, but no Costs were ordered to be paid.

* P. 114 * Price and Selby *against* Lewis and others.

Cooke.

Need not be fifteen Days between the Telle and Return of a Scire Facias.
Lutwich 24.
Ante 18, 34.

SCire Facias against Bass, Plea in Abatement that there are not fifteen Days between the Telle and Return of each of the Scire Facias's; on Demurrer Judgment for the Plaintiff, that the Defendants answer over, for there need not be fifteen Days between the Telle and Return of each of the Scire Facias's, but only fifteen Days between the Telle of the first Scire Facias and the Return of the second Scire Facias.

Strickland, Bart. *against* Hodgson.

Cooke.

S. G. Pract.
Reg. C.P. 329.
Notes Pract.
262.
Declaration against a Prisoner in a County Gaol, need not be filed before the Delivery.

A Motion to stay Proceedings upon a Declaration delivered to a Prisoner in a County Gaol, because such Declaration was not first entered in the Prothonotary's Office, and on hearing Counsel on both Sides, the Court said there was neither Act of Parliament, nor Rule of Court, that did oblige the Filing such Declaration before the Delivery thereof to the Prisoner, but that it

Court of Common Pleas.

It was sufficient to file such Declaration in the Office any Time before the giving a Rule to appear and plead.

Note; The Entering the Declaration with the Prothonotary, is only necessary where the Prisoner is in the Fleet.

Hil. 8 G. II.

*Stat. 4 & 5
W. & M.
cap. 21.*

Peirson against Ives.

Cooke.

A Motion for Leave to add the general Issue to a Plea of Non assumpsit infra sex annos, and this moved after a Demurrer to the Plea.

The Court discharged the Rule to shew Cause, for they said a Defendant cannot add to his Plea after a Replication or Demurrer.

*S. C. Notes
Pract. 234.
Can't add to a
Plea after Re-
plication or
Demurrer.*

* Roe against Doe.

* P. 115

IN Ejedment, a Motion for Judgment, the Tenant acknowledged he received the Declaration from his Father, and held by the Court a good Delivery, and Rule for Judgment ordered.

Note; *Snape against Hunt, Hil. 8 Geo. II.* The like Resolution on a Delivery to the Daughter, and the Tenant's confessing the Receipt of it.

*S. C. Notes
Pract. 112.
Good Service
of a Declara-
tion delivered
to the Te-
nant's Father,
Tenant ac-
knowledging
the Receipt.
Ante 75.*

Chalken

Cases of Practice in the

Hil 8 G. II.

Chalken *against* Janfon.

Cooke.

Process with
Notice to ap-
pear on the
Appearance-
Day.

Ante 105.

Jamet v.

Voyer.

Smith v.

Jenks, 69.

Morse v.

Farnham,

Pepper, v.

Bowden, 92.

Post. Grimes

v. Clever,

Mich. 11 G. II.

A Copy of Process served with Notice to appear at the Return, being the 23d of October, whereas the same should have been the Return-Day, which was the Sunday before; upon a Motion to stay the Proceedings, the Court granted a Rule to shew Cause. In Easter Term following, the Rule was discharged, upon hearing Counsel on both Sides, the Defendant being too late in making Application, for he did not complain to the Court till after Judgment signed.

Freeman and his Wife *against* Cannon and others.

Motion to set
aside the
Grand Cape,
for want of
sufficient
Summons.

IN Dower upon a Motion to set aside a Grand Cape, because the Summons was not proclaimed fourteen Days before the Return, according to the Statute 31 Eliz. cap. 3. sec. 2.

The Court ordered a Rule to shew Cause; and no Defence being made, the Rule was made absolute on Affidavit of Service.

Noble

Court of Common Pleas.

* Noble *against* Lancaster. *East.* 8
Geo. II.

East. 8 G. II.

* P. 116

IN Trover, Non assumpsit, Issue there-
on, and a Verdict for the Plaintiff
pleaded, but the Issue being immate-
rial, Judgment was set aside, a Re-
pleader ordered, and for want of a
Plea interlocutory Judgment was
signed, and a Writ of Inquiry execu-
ted; and now the Question was, if the
Costs of the Trial should be allowed
in the Taxation; the Court directed
that such Costs should not be allowed,
for that in this Case there were Faults
on both Sides.

What Costs on
an Inquiry af-
ter Trial,
and a Replea-
der had been
ordered.

Danes *against* Monfay.

Thomson.

A Motion for an Attachment for not
performing an Umpirage, and
granted Nisi. It is settled that Arbitra-
tors cannot proceed on a Reference, af-
ter they have once named an Umpire,
for then their Authority ceases, tho' the
Time for making their award is not
expired.

Arbitrators
can't proceed
after they
have named
an Umpire.
Stat. 9 & 10
W. 3. c. 15.

Jones

Cases of Practice in the

East. 8 G. II.

Jones versus Wilkinfon.

Thomfon.

Judgment
held good tho'
the Defen-
dant's Attor-
ney was not
called on for
a Plea.
Ante 80.
Morris
v. Parry.

UPON a Motion to set aside an interlocutory Judgment, on the Defendant's Attorney's Affidavit, that he was not called on for a Plea, a Rule to shew Cause was granted. On shewing Cause, it appeared that the Defendant's Appearance was entered by the Plaintiff, pursuant to the Statute, and that Notice of a Declaration being filed, had been delivered to the Defendant; the Court declared that in this Case the Plaintiff was not obliged to take Notice of any Attorney that should afterwards appear to be concerned, and held the Judgment to be regularly signed.

* P. 117 * *Blik against Halpenn and his Wife.*

Borret.

S. C. Praet.
Reg. C. P. 65.
Notes Praet.
58.

A married
Woman dis-

charged. *Cro. Car. 178. Roll's Abr. 583. 1 Sid. 395. In B. R. Clarkson v. Watkinson and Wife, Trin. 9 Geo. I. Ante 52.*

Curia:

Court of Common Pleas.

Curia: She shall be discharged on a *East. 8 G. II.*
Common Appearance, for otherwise it might be in the Power of a Husband to set up sham Actions against his Wife and keep her in continual Imprisonment; but in case both Husband and Wife had been taken, then both should be held till Bail be given for both, for otherwise a Woman might marry a Prisoner, and thereby might defraud her Creditors.

Cowper against Sayer.

Cooke.

A Motion for an Attachment, and Rule Nisi, against Hodgson an Attorney, for commencing a Suit in his own Name after he was forejudged; on shewing Cause the Rule was made absolute, and an Attachment granted against him.

An Attachment against an Attorney for bringing an Action in his own Name after he was forejudged. See after *The King v. Hodgson, Trin. 1735.*

Maddox against Paston.

Cooke.

SIX Pounds brought into Court on the common Rule, and the Plaintiff recovered but five Pounds; by the Words of the Rule, the Plaintiff was to have the Money out of Court; but the Defendant moved to have the six Pounds

Money paid into Court returned to Defendant in Part of his Costs. Ante 5, 54. *Lane v. Wilkinson, Trin. 13 G. II.*

Cases of Practice in the

East. 8 G. II. Pounds paid in Part of his own Costs, and granted.

Tomlinson *against* White.

Cooke.

S. C. Notes
Pract. 92.
No more Costs
than Damages
in Trespas.

* P. 118

Denny v. Wigg,
Mic. 10 G. II.
Stat. 22 & 23
Car. II.
cap. 9.
Parke v.
Dawis, Mich.
1728.
Beck v. Nichols,
Trin. 1733.
Rofiter v. Bolt-
ing, Trin. 9
Geo. I.
Carruthers v.
Lamb, Mich.
1734.

I N Trespas Quare clausum fregit, and for breaking a Door, the Plaintiff had laid Special Damages in his Declaration; the Jury found the Special Matter for the Defendant, * and the Rest for the Plaintiff, and Damages five Shillings; and now the Defendant moved that no more Costs than Damages should be allowed, and a Rule Nisi was granted, which was afterwards made absolute, upon hearing Counsel on both Sides, because the Special Matter being found for the Defendant, the Rest was a Trespas against the Plaintiff's Freehold, the Title of which might have come in Question; and therefore it was requisite that the Judge should have certified in Order to intitle the Plaintiff to full Costs.

Smith

Court of Common Pleas.

East. 8 G. II.

Smith *against* Hayward.

Borret.

AN Action for Words, viz. He, meaning the Plaintiff, hath committed Sodomy upon my Child, and other Words, this Child can hang you; a general Verdict and 100l. Damages.

On a Motion in Arrest of Judgment, the Verdict being General, and the last Words not actionable, the Court set aside the Verdict, and ordered a Venire facias de novo.

*S. C. Notes
Pract. 336.
Two Sets of
Words, Part
not Action-
able, Verdict
set aside.*

*Reg. Mich.
1654. sec. 24.*

Clarke *against* Taylor.

Cooke.

THE Court being moved to tax the Plaintiff's Bill of Costs, a Rule Nisi was granted, but upon shewing Cause it appeared that an Action had been depending some Time, and a Writ of Inquiry executed, therefore the Court discharged the Rule, declaring that the Defendant came too late, after an Inquiry executed, and the Damages ascertained.

Note; The Court seemed of Opinion that it would be too late to apply for taxing a Bill of Costs after Judgment signed, but that not being the Case before them,

P

no

*S. C. Pract.
Reg. C. P. 38.
Attorney's
Bill not to be
taxed after In-
quiry execu-
ted.*

Cases of Practice in the

East. 8 G. II. no absolute Determination was given as to that Point.

Williams *against* Evan Jones and
Edward Jones.

Cooke.

Postea amended by the Judges's Certificate.

A Verdict for the Plaintiff generally; the Lord Chief Justice certified, that the Defendant Edward Jones was found Not guilty, but that the Associate had by Mistake taken a Verdict against both; ordered the Return of the Postea to be * amended, by indorsing on the Postea, that Edward Jones is not Guilty.

Grimston *against* Grimston, on the Demise of Lord Gower, and another.

Borret.

Six Issues in Ejectment put into one.

SIX Declarations in Ejectment, delivered to six Tenants, one Appearance and one Plea for all jointly, six several Issues delivered and paid for; Motion to put them into one, all the Declarations being alike. Mr. Justice Denton ordered it to be so; the Plaintiff dissatisfied with the Order moved the Court, but the Court confirmed the

Court of Common Pleas.

the Judge's Order, the constant Practice being to make but one Cause. *Trin. 8 & 9 Geo. II.*

Stratford *versus* Marshall.

Borret.

A Motion to put off a Trial till Michaelmas Term next, and granted after a Rule to shew Cause, tho' it was declared the common Practice was only to put off Trials from one Term to another.

S. C. Pract.
Reg. C.P. 399.
Notes Pract.
319.
Trial put off
from Easter to
Michaelmas
Term.
Ante 45.

Ward *against* Colclough. *Trin. 8*
& 9 Geo. II.

Cooke.

THE Court denied Leave to change the Venue on a Bill of Exchange or promissory Note, for these are in the Nature of Specialties.

Note; *Viggers against Viggers*, *Trin. 10 Geo. II. Cooke*; The Court made the like Resolution, and so it was said to be ruled in the King's Bench.

Venue not
changed on a
Bill of Ex-
change or
promissory
Note.
Vide ante 36.

Cases of Practice in the

Trin. 8 & 9

Geo. II.

Byer *against* Whitaker and others.
Thomson.

S. C. Pract.

Reg. C.P. 344.

Notes Pract.

290.

Process of the
Common Pleas
served in the
County Pala-
tine of Lan-
caster.

* P. 120

Ante 38.

Mic. 1 G. II.

which was be-

fore the Stat.

5 G. II. c. 27.

IN this Cause a Motion was made in
Easter Term 1735, to stay Proceed-
ings on a Testatum Capias, a Copy of
which had been served on the Defen-
dant in the * County Palatine of Lan-
caster, without taking out of a Man-
date thereon from the Chancellor of
the County Palatine, and a Rule to
shew Cause being granted, the Matter
now came on to be debated; and Coun-
sel being heard on both Sides, the
Court held that the Process was well
served, and pursuant to the Statute of
5 Geo. II. cap. 27, and therefore the Rule
to shew Cause was discharged.

Goodright *against* Hoblyn.

Borret.

S. C. Notes

Pract. 212.

Countermand
of Trial may
be given ei-
ther in Town
or Country.

Ante 48.

IN Ejectment, a Motion for Costs
for not going on to Trial, a Coun-
termand was given in the Country;
but it was objected, that such Coun-
termand was not good, for that it
ought to have been given in Town.
The Court declared that all Notices
of Trial must be given in Town, but
Countermands may be given either in
Town or Country.

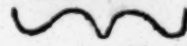
Tomkin

Court of Common Pleas.

Trin. 8 & 9

Geo. II.

Tomkin *against* Perry.



Cooke.

A Plea in Abatement, viz. That there is no Addition of Estate, Degree or Mystery to the Defendant's Name, was pleaded after a special Impar lance, but no Affidavit made of the Truth of such Plea, and for want thereof Judgment signed; and now upon Motion to set aside the Judgment, it was insisted that there is no Occasion for an Affidavit, because the Truth of the Plea appears by the Declaration; but afterwards the Parties consenting that the Judgment should be set aside, upon the Defendant's pleading an issuable Plea to the Action, and taking short Notice of Trial, and also that the Costs of each Side should attend the Event of the Suit, no direct Opinion was given by the Court in the principal Point.

Plea in Abatement without Affidavit of the Truth of the Plea.

Delafountain v. Mings,
Ante 38.

Cotton *against* Perks, Widow.

Thomson.

A Rule obtained for Payment of five Pounds into Court; the Money had been tendered, but was refused, and

S. C. Pract. Reg. C.P. 258.
Money tendered and refused, yet Defendant to pay

P 3

the Costs, Plaintiff not refusing to attend and take his Costs.

Cases of Practice in the

Trin. 8 & 9 Geo. II.
* P. 121
and on that Refusal brought into Court, and Costs taxed; the * Defendant insisted that no Costs ought to be paid, the Plaintiff having refused the Money. The Counsel for the Defendant insisted, that the refusing the Money, when tendered had put the Defendant to the Charge of paying it into Court and pleading, therefore the Plaintiff ought to pay Costs from the Time of the Refusal; but the Court over-ruled this, for tho' the Defendant tendered the Money, she could not tender the Costs before they were taxed.

Foster Plaintiff, Pollington and his Wife and others, *Deforcants.*

Borret.

*S. C. Notes
Pract. 143.*

A Fine amended by striking out superfluous Words.

*Ante 9, 17, 52.
Post. 127.*

IT was moved to amend a Fine by striking out the Words in America in partibus Transmarinis; this Fine was of Lands and Tenements in the Island of Antigoa, otherwise Antigua in Paroch' Stæ. Mariæ, Islington, in the County of Middlesex, and was past in the Year 1714. Application had been made to the Master of the Rolls, and an Order made by his Honour for the Amendment, which Order was set aside by my Lord Chancellor. After great Debate in this Cause (a Writ of Error being depending)

Court of Common Pleas.

depending) the Judges were unanimously of Opinion that this Court had the only Cognizance of Fines, and ordered the same to be amended.

Trin. 8 & 9

Geo. II.

The King *against* Hodgson.

Cooke

A Recognizance to answer Interrogatories on a Contempt, and Interrogatories filed; but the Defendant before his Examination applied to the Court to be discharged, on Payment of the Costs of the Complainant only, which was granted, and the Recognizance discharged; in the Original Cause a Writ of Error being depending, the Complaint against the Defendant was for practising in his own Name as an Attorney, being forejudged the Court.

Defendant discharged of a Contempt on submitting to pay the Costs of the Complainant. See *Cowper v. Sawyer. Pract. Reg. C. P. 42.*

* Coates and others *against* Smith and Midgley.

* P. 122

Cooke.

IN Prohibition, a Motion to plead double, viz. That J. C. &c. named in the Declaration at a Meeting, &c. did not make up a true and just Account, &c. And that the Account mentioned in the Declaration, was not examined, approved and

Leave to plead double in Prohibition.

Cases of Practice in the

Mich. 9 G. II. allowed by the Vestry ; which was granted upon hearing Counsel on both Sides.

Taylor against Sharman.

Cooke.

Judgment set aside for want of sufficient Notice of the Declaration.
Ante 63, 68.

A Motion to set aside a Judgment for want of sufficient Notice of the Declaration, the Notice was a Declaration is left against you in the Office, &c. for 15 l. due by Note under your Hand, without saying whether in Debt or Case, for an Action of Debt might be maintained on such a Note, so that the Nature of the Action did not appear; and for that Reason the Judgment was set aside upon hearing Counsel on both Sides.

Tidmarsh against Procter. *Mich. 9 Geo. II.*

Cooke.

S. C. Pract. Reg. C.P. 336. Notes Pract. 263.
Motion to discharge a Prisoner, because the 2 s. 4 d. was not continued after Plaintiff's Death.

A Motion by a Prisoner for his Discharge, the Payment of 2 s. 4 d. per Week being discontinued on the Plaintiff's Death; the Act of Parliament does not make any Provision where the Plaintiff dies, so it is Casus omissus; however the Court made a Rule for the Plaintiff's Executor to shew Cause why the Defendant should not be discharged;

Court of Common Pleas.

charged; and no Cause being shewn, *Mich. 9 G. II.*
the Court on Affidavit of Service made the Rule absolute for the Defendant's Discharge.

* Knight *against* Winter.

* P. 123

Thomson.

MOTION to set aside Execution against the Bail; it appeared that the Defendant was rendered, and the same entered in the Judge's Book, but not in the Bail-Piece as usual, the same having been taken away by the Plaintiff's Attorney, so that the Render could not be entered thereon; the Court held the Render to be good, and ordered the Executions to be set aside with Costs.

S. C. Notes
Pract. 59.
A Redditi
entered in the
Judges Book,
good.
Ante 53.
Post. Long v.
Woodyer, Hil.
9 Geo. II.

Arne *against* Neeler.

Cooke.

A Motion for an Attachment against the Under Sheriff of Middlesex, for not returning a Capias upon a peremptory Rule for that Purpose, the Affidavit of Notice was to Mr. Benson, who acts, and for many Years last past has acted as Under Sheriff; it was objected that by the Affidavit Mr. Benson appears to be only an acting Under Sheriff,

Attachment against the Sheriff, on a Rule served upon Affidavit of Notice on one who was not Under Sheriff, but acted as such.
Franklin v. Nash,
Ante 87.

Cases of Practice in the

Mich. 9 G. II. Sheriff, and not the real Under Sheriff, and that Personal Notice ought to be given to the Real Under Sheriff; the Court granted an Attachment against the Sheriff, and said Mr. Benson was well known to be the acting Under Sheriff.

Taylor *versus* Lawson.

Borret.

*S. C. Notes
Pract. 177.
Plea delivered
in the Country.
Ante 94, 101,
109.*

A Plea was delivered in the Country, and afterwards Judgment signed for want of a Plea, which the Court held to be regular, however they set aside the same on the Defendant's pleading, and consenting that the Costs should attend the Event of the Trial.

* P. 124

* Phillips *against* Fowler.

Cooke.

*S. C. Pract.
Reg. C.P. 409.
Notes Pract.
321.
Motion to set
aside a Verdict
for a Misbehaviour
of the Jury.*

UPON a Motion to set aside a Verdict for a Misbehaviour of the Jury, it was objected that the Defendant had already moved in Arrest of Judgment, and after this could not be admitted to move to set aside the Verdict; but the Court over-ruled this Objection, because the Fact of the Jury's Misbehaviour came lately to Knowledge, and granted a Rule to shew Cause;

Court of Common Pleas.

Cause; and the Defendant's Counsel *Mich. 9 G. II.*
cited many Cases, where Motions had
been made to set aside Verdicts after
Motion in Arrest of Judgment.

Craven *against* Aislaby.

Thomson.

IN this Cause Judgment had been
signed too soon, and it being by Mis-
take, the Prothonotary struck the same
out of his Book; it was said that this
had been often done, and held good.

*S. C. Pract.
Reg. C.P. 294.
Notes Pract.
178.
Judgment
signed by Mis-
take, waived
without Mo-
tion.*

Elwood *against* Elwood.

Cooke.

A Quaker's Affirmation of the Exe-
cution of an Award, or any other
Thing relating to a Motion for an
Attachment, is not to be received or
read.

*Attachment
not grantable
on a Quaker's
Affirmation.*

Swale

Cases of Practice in the

Mich. 9 G. II.

Swale an Attorney against Leaver.

Thomson.

S. C. Pract.

Reg. C.P. 388.

Notes of Pract.

213.

Non-suit at the
Sittings set a-
side, for want
of fourteen
Days Notice
of Trial by
Proviso.

* P. 125

Ante 63.

Williams v.

Jones, 101.

Jones v. Her-
gest, 110.

Regula Cur'

Mich. 1654.

sec. 21.

A Motion to set aside a Non-suit ob-
tained at the Sittings for Middle-
sex, upon a Record by Proviso for
want of fourteen Days Notice of
Trial; it was insisted for the Plaintiff,
that tho' he was an Attorney, and lived
in Town, and supposed to be present
in Court, yet the Defendant living a-
bove forty Miles from London, each
Party ought to have fourteen Days
Notice of Trial; the Defendant ob-
jected that * the Plaintiff having suffer-
ed a Non-suit, was out of Court, and
could not now be heard, but the Court
over-ruled the Objections, for here the
Question is about the Regularity of
the Non-suit, and if that Objection
should be allowed, it would be *Excep-*
tio ejusdem rei cuius petitur Dissolutio;
and they likewise held, that as the
Plaintiff must have been obliged to
give the Defendant fourteen Days
Notice, so likewise the Plaintiff ought
to have had the same Notice, and set
aside the Non-suit.

Bray

Court of Common Pleas.

Hil. 9 G. II.

Bray *against* Booth

Borret.

NON Pros signed for want of a Re-
plication to a Plea of Tender
where the Money was not brought in
to Court, afterwards Judgment signed
for want of a Plea. Upon Motion to
set aside the Judgment, it was objected
that the Non pros was good till set
aside, and therefore Judgment irregu-
lar, but the Court over-ruled that Ob-
jection, and said the Non pros was irre-
gular, and therefore of it's self void.
Upon this Motion the Prothonotaries
Mr. Thomson and Mr. Borret both af-
firmed that the Judgment was good,
and that the Non pros being irregular,
there was no Occasion to move the
Court to set it aside.

S. C. Pract.

Reg. C.P. 239.

Notes Pract.

179.

Judgment
held good,
tho' signed af-
ter a Non
Pros.

Austin *against* King and his Wife.

Hil. 9 Geo. II.

THE Defendants were brought into
Court in order to be discharged;
the Question was, Whether the Hus-
band and his Wife should be allowed
2s. 4d. a Week each, or whether, there
being but one Judgment, one
should not be sufficient. The Court

S. C. Pract.

Reg. C.P. 337.

A Man and
his Wife Pri-
soners, allow-
ed 2s. 4d.

each, tho' but
one Judgment.

were

Cases of Practice in the

Hil. 9 Geo. II. were of Opinion that the Act of Parliament extended to the Person, and not to the Cause, and therefore ordered 2 s. 4 d. per Week to each.

Ware *against* Rackett.

Cooke.

S. C. Notes
Pract. 23.
Arrest, Affidavit not filed.

** P. 126*

THE Court was moved for an Attachment against the Plaintiff, upon the Defendant's Affidavit, that he was arrested and held to Bail, no Affidavit being filed of the Debt, and ** a Rule to shew Cause was granted;* on hearing Counsel on both Sides, it appeared that Affidavit had been made, but by Mistake was not filed; the Court therefore discharged the Rule for an Attachment, but ordered the Plaintiff to pay Costs, the Defendant consenting not to bring any Action.

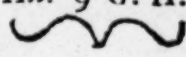
Bridger *against* Coleby.

Cooke.

On a Rescous returned an Attachment issues without Motion.
Ante 88.

UPON a Motion for an Attachment upon a Rescous returned, a Rule to shew Cause was granted; but the Court afterwards discharged the Rule, and said it was the standing Practice, that in all Cases where a Rescous is returned

Court of Common Pleas.

returned by the Sheriff, a Capias pro *Hil. 9 G. II.*
Rescussu, which is in the Nature of an 
Attachment, issues of Course.

Albany *against* Griffin and his Wife.

Thomson.

ON a Piece of Stamp Paper the Defendants say they are Not guilty, without delivering the Plea at length, the Plaintiff signed Judgment for want of a Plea. The Court said it was no Defence, so the Judgment was held regular.

S. C. Pract.
Reg. C.P. 306.
Plea must be delivered at length, and not shortly, as Not guilty only.

Carew against Minifree, Hil. 9 Geo. II.
Cooke. The same Rule.

Ball *against* Young.

Cooke.

A Motion to change the Venue, and Rule to shew Cause granted; on shewing Cause it appeared that, after the Rule to plead was out, the Defendant applied to a Judge for Time to plead, and pending the Summons, moved to change the Venue. Per Cur, he should have applied to change the Venue sooner, the Rule must be discharged.

S. C. Pract.
Reg. C.P. 425.
Venue not to be changed after a Summons for Time to plead. Ante 33, 57. Post *Lucas v. Rud, Mich.* 10 Geo. II.

Cases of Practice in the

Hil. 9 G. II.

Sheppard Demandant, Harris Tenant, Dewey Widow, and others Vouchees.

Thomson.

Recovery completed tho' no Exemplification or Writs.

* P. 127

Ante 9, 17, 25, 30, 52, 74, 121.

A Rule to complete a Recovery of Easter Term the 9th of Queen Anne; the Precipe at Bar was signed by Serjeant Richardson, the Plea Roll entered, and the * Exemplification ingrossed, but not sealed, and neither the Roll carried in, or the Writs filed; upon reading the Deeds and Affidavit of Notice to the respective Parties, the Recovery was ordered to be completed, and the Rolls and Writs to be filed.

Clapham v. Bacon, Trin. 2 Car. I. A Recovery agreed to be suffered by A. B. and Richard C. the Writ of Entry was sued out in the Name of John C. instead of Richard, but ordered to be amended.

Mich. 4 Car. I. A Warrant to suffer a Recovery by W. Reynolds and Hester his Wife; the Serjeant had certified that the Warrant was given by W. R. and Margaret his Wife, the Mittitur and Transcript made and the Recovery entered

Court of Common Pleas.

tered accordingly, but ordered to be amended. *Hil. 9 G. II.*

Thurban v. Pantry, Mich. 8 Car. I. A Recovery suffered by A. B. and C. his Wife, but the Name of the Wife totally omitted, ordered by the Court to be amended.

Doncaster v. Champion, East. 16 Car. I. A Recovery was suffered, but the Writ of Seisin was made returnable the same Return as the Writ of Entry. The Return ordered to be amended.

Bunce & al' v. Greenway & al', Mich. 4 W. & M. The Writ of Entry was made returnable Tres Mich. 33 Car. II. which was before the Date of the Deed, to make a Tenant to the Precipe: And ordered to be amended by making the Writ returnable Crastin' Animarum.

Wattry v. Jodrell, Mich. 5 W. & M. and Warkhouse v. Watts, Mich. 5 W. & M. The like Amendments were order'd to be made.

Ives & al', Demandants, v. Young, Tenant, Frampton Vouchee, Trin. 12 W. III. Tempest. Upon the Certificates of the Custos Brevium, Mr. Prothonotary Tempest, and the Clerk of the Warrants of Recovery ordered to be entered of Record above 60 Years after it was taken at Bar.

Cases of Practice in the

Hil. 9 Geo. II. of this Court, that the Writ of Entry and Writ of Seisin between the Parties had been duly issued, and also that the Recovery in this Cause was taken at the Bar of this Court of the Term of St. Michael in the eighth Year of King Charles the First, all the Parties in the said Recovery named then and there appearing in their own Persons, It was ordered that the said Recovery should be entered of Record of that same Term of St. Michael, upon the 134th Roll among the Rolls of the Pleas of Land inrolled in that Term.

* P. 128 * Mackdonnel *against* Gunter and others.

Thomson.

A Declaration reduced from four Counts to two, and Attorney to pay Costs.

A Motion to reduce a long Declaration of four Counts into two, there being no Necessity for more; and the Court ordered the same, and that the Attorney should pay the Costs.

The same Term *Morgan against Hill*, The like Rule, but no Costs.

Olorenshaw

Court of Common Pleas.

Hil. 9 G. II.

Olorenshaw *against* Stanyforth.

Cooke.

ON a Rule to shew Cause why the Plaintiff should not be at Liberty to take out Execution upon the Judgment obtained, notwithstanding a Writ of Error brought, the same being ineffectual by the Death of Lord Chief Justice Eyre; the Rule made absolute, the Lord Chief Justice not having signed the Return of the Writ of Error.

S. C. Notes
Pract. 136.
Leave to take out Execution where the Writ of Error abated by the Death of the Chief Justice.
1 Sid. 168.
1 Keb. 658.

Cranburn v. Quennel, Hil. 9 Geo. II. and *Middleton v. Gardner*, The like Rules.

Carter an Attorney *against* Smith.

Cooke.

A Warrant of Attorney taken by the Plaintiff to confess a Judgment to himself held not good, the Defendant being in Custody, and no other (a) Attorney present; whereupon the Judgment and Execution thereon were set aside, and Restitution ordered.

Note; In this Cause the Defendant was held to be in Custody, tho' the Officer left the Defendant some Time, whilst the Plaintiff Carter got the Warrant of Attorney from the Defendant.

Judgment on a Warrant of Attorney taken of a Prisoner set aside, no Attorney for the Defendant being by.
(a) But where the Defendant himself is an Attorney, the Warrant is good, tho' no other Attorney be present.
Ante 94.

Cases of Practice in the

Hil. 9 G. II.

Judgment set aside where the Declaration was delivered to the Defendant, not being able to find his Attorney.

Ante 50, 84.

* P. 129

Hutching *against* Lillyman.

Cooke.

A Motion to set aside a Judgment; the Case was, The Plaintiff's Attorney not being able to find the Defendant's Attorney, delivered the Declaration to the Defendant himself, and for want of a Plea signed Judgment; and tho' * the Defendant's Attorney owned the Receipt of the Declaration from his Client, yet the Judgment was set aside, for that the Declaration was delivered to the Defendant himself, and not received by his Attorney till after the *Essoin-Day* of this Term.

Craftell *against* Cocker.

Cooke.

Venue not to be changed into a County Palatine.

Ante 36, 91.

A Motion to change the Venue from Middlesex to Durham; the Court refused to change the Venue to a County Palatine, and it was then said that the Court does not use to change the Venue to any County where the Assizes are held but once a Year.

Ling

Court of Common Pleas.

East. 9 G. II.

Ling *against* Woodyer.

Cooke.

ON Motion, it was ordered that the particular Hour of the Day on which the Defendant surrendered himself in Discharge of his Bail, should be specified in the Entry of the Surrender.

S. C. Notes

Pract. 61.

The Time of

Surrender to

be specified in

the Entry.

Anie 53, 58,

123.

Post Williams

v. Pay.

Crockhay *against* Martyn. *East. 9*
Geo. II. 1736.

Cooke.

THE Plaintiff being dead, the Defendant moved to have 10*l.* out of Court; but it was objected thereto, that it belonged to the Plaintiff's Executor; on Debate and Counsel heard on both Sides, a Rule was made that the Plaintiff's Executor should bring a new Action, and in the mean Time all Things should stay.

S. C. Notes

Pract. 196.

Motion for

Money out of

Court, Plain-

tiff being

dead.

Cases of Practice in the

East. 9 G. II.

S. C. Pract.

Reg. C. P. 183.

Pending a

Writ of Error *Cooke.*

Plaintiff may bring Debt on the Judgment, and proceed to Execution, unless stayed by Motion.

* P. 130

Humfryes against Daniel.

IN an Action of Debt on a Judgment pending a Writ of Error, the Court held that the Plaintiff may take out Execution on the last Judgment notwithstanding the Writ of * Error, unless the Defendant moves to stay the Proceedings.

Sidebotham against Frith an Attorney.

Borret.

Demurrer for an insufficient Memorandum to the Declaration on a Bill filed against an Attorney. Ante 105.

THE Defendant demurred, for that the Plaintiff in the Memorandum of the Entry of the Bill had not shewn what was the Nature of the Action, as Debt or Case. The Court over-ruled this Objection, and said the Nature of the Action was sufficiently set forth in the Declaration.

Southouse against Pye.

No Motion to *Cooke.*

set aside Judgment the last Day of Term, if Defendant could have applied sooner,

NO Motion to set aside Judgment the last Day of the Term, unless it does appear that the Defendant could not sooner apply.

Cooke

Court of Common Pleas.

Tri. 10 G. II.

Cooke *against* Holgate. Trin. 10
Geo. II.

Thomson.

MOVED to bring many Household Goods into Court; if it had been any particular Thing they would have granted it, but they would not incumber the Court with many Goods; but made a Rule to shew Cause why the Plaintiff should not consent to accept the Goods and his Costs.

The bringing many Goods into Court denied, but a Rule for Plaintiff to shew Cause. Ante 59.

Watkinson v. Cockshot, Hil. 6 Geo. II.
Borret, A Motion to bring Goods into Court denied.

Humfreys *against* Mitchel.

Cooke.

MOVED to stay Proceedings, the Process being dated the 16th of June, but the Copy was dated the 26th of June.

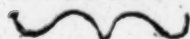
Proceedings stayed, Copy served varying from the original Process.

* Cur', It is not a true Copy of the Process, therefore let Proceedings be stayed.

* P. 131

Cases of Practice in the

Tri. 10 G. II.



Green *against* Bell.

Thomson.

May amend
Declaration
by adding
new Counts
any Time be-
fore the End
of the second
Term.

*Mich. 1654.
sec. 17.*

A Motion to amend a Declaration by adding two Counts, and after hearing Counsel on both Sides, granted on Payment of Costs; and it was settled to be the Course of the Court, that the Plaintiff may, at any Time before the End of the second Term, have Leave to amend his Declaration by adding new Counts, but not afterwards.

Huckle *against* Ambrose.

Borret.

*S. C. Pract.
Reg. C. P. 87.
Notes Pract.
61.*

To vacate a
Render at a
Judge's Cham-
ber, because
the Defendant
refused to pay
the Fees.

MOVED to vacate a Render, because the Defendant would not pay the Fees, which were not demanded till after the Render made. 2 Keb. 2. It is not a complete Surrender till it be entered on Record. Ordered that the Entry of the Render in the Judge's Book be struck out.

Cartwright

Court of Common Pleas.

Tri. 10 G. II.

Cartwright *against* Gardner.

Thomson.

A View from the Assizes, and the whole Entry on the Record since the Issue actually made; moved to strike out the whole Entry relating to the View, upon an Allegation that the Plaintiff could not proceed thereon, and cited a Case between Bratcher and Cotton, where the same was granted in Hilary Term last in Mr. Cooke's Office. The Court said such Rule was obtained by Surprise, and that such Alteration could not be made unless by some Entry to amend it by.

Amendment of a Record by striking out the Entry of a View, there being nothing to amend by. Ante 76.

Weeks and his Wife *against* Robins.

Cooke.

A Motion to set aside Judgment, because the Writ was sued out at the Suit of the Plaintiff only, and so consequently no Foundation for the Action.

S. C. Praes. Reg. C.P. 142. Declaration at the Suit of Husband and Wife, can't be delivered on a Process, at the Suit of the Husband only.

* The Question was, Whether the Plaintiff might not deliver a Declaration at the Suit of himself and Wife, on a Writ at his own Suit only. On bearing Counsel on both Sides, the Court

* P. 132

Cases of Practice in the

Tri. 10 G. II. Court declared that no such Action could be maintained, unless there had been Process at both Plaintiff's and his Wife's Suit.

If the Plaintiff had sued out a Writ at the Suit of himself and Wife, he might have delivered a Declaration at his own Suit, as a Declaration by the Wy.

Welland *against* Funieall,

Cooke.

Venue may be changed, tho' the Plaintiff be an Attorney, if he sues by Capias. *Post. Girdler v. Mathews, Hil. 11 G. II. Mills v. Johnson, Mich. 10 Geo. II.*

A Motion to change the Venue; the Plaintiff being an Attorney insisted on his Privilege as such; but it appearing that he sued the Defendant by Capias and not by Attachment, the Court declared he was not intitled to the Privilege of an Attorney, unless he claimed it properly; if he sues as a common Person, he must be treated as such.

Lord Griffin *against* Bugby.

Thompson.

Venue not changed in *Scan. Mag.* Vide ante 36.

IN an Action of Scandalum Magnatum, on Motion to change the Venue, it was agreed by the whole Court to be the



Court of Common Pleas.

the constant Practice to deny such Motion. *Tri. 10 G. II.*

Note ; Between Lord *Stamford* and *Brown*, *Trin. 1 Geo. I.* There was the like Resolution by the Court.

Phillips against Hedges.

Cooke.

A Motion for an Attachment against the Defendant for cursing the Chief Justice and Court on Service of Process; the Words were G---d D---n the Lord *Reeves* and the Court, and that he neither cared for him or them; and an Attachment was granted absolute, without any Rule to shew Cause, that being the constant Method for a Contempt of this Nature.

Attachment
for Cursing
the Chief Ju-
stice and Court
on Service of
Process.

* Box against Read and others. * P. 133

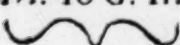
Cooke.

A Motion to change the Venue; on shewing Cause *Mr. Serjeant Bel-* field appeared for some of the Defendants, and said he did not desire the Venue should be changed. The Plaintiff had entered an Appearance for those Defendants, and it seemed a Contrivance to disappoint the other Defendants

S. C. Pract.
Reg. C. P. 430.
Venue chan-
ged, tho' some
of the Defen-
dants did not
concur in the
Motion.
Vide ante 36.



Cases of Practice in the

Tri. 10 G. II.  dants of their Rule obtained to change the Venue; and tho' the Prothonotaries all declared this had never been done, yet the Court made the Rule absolute.

Hannot and others *against* Farrelles.

Borret.

S. C. Pract.
Reg. C.P. 194.
Notes Pract.
268.
Prisoner committed in Execution, tho' Writ of Error allowed.

A Prisoner brought up by the Warden of the Fleet on a Habeas Corpus to be charged in Execution, but the Prisoner had served Notice of the Allowance of a Writ of Error; the Court would not stop the Habeas Corpus, but Defendant was charged in Execution notwithstanding.

La Marque *versus* Newnam.

Cooke.

S. C. Pract.
Reg. C.P. 447.
Notes Pract.
214.
Inquiry set aside for Incertainty in the Notice.
Ante 99, 113.

A Motion to set aside a Writ of Inquiry for Incertainty in the Notice given for the Execution thereof; the Notice was, that the same would be executed at the Three Tuns in Brookstreet, Middlesex, whereas there are three Brookstreets in Middlesex.

Curia: This Notice is incertain, for it does not say what Brookstreet, if it had been Brookstreet, Holbourn, it would have been good.

Daver.

Court of Common Pleas.

* *Davershill against Barret.* Mich.
10 Geo. II.

Thomson.

A Motion to set aside Judgment, signed after Plea of Tender delivered; the Defendant was by Rule obliged to plead an Issuable Plea; a Tender is no Issuable Plea within the Meaning of this Rule; therefore the Judgment was held good.

Mic. 10 G. II.

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\* P. 134

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S. C. Pract.

Reg. C.P. 298.

Tender no Issuable Plea after Time given to plead.

Whitall v.

Green, Hil.

8 Geo. II.

Leaver v.

Whitcher, Hil.

10 Geo. II.

De Cerissay against O-Brien.

Cooke.

A Motion to stay Proceedings against the Defendant, he being a Courier in the Service of Sir Thomas Geraldino the Spanish Envoy; the Plaintiff alledged the Defendant was a Trader. On the other Side it was said, that the Circumstance of the Trade was so minute, that it could not amount to a Trading, and that the Defendant could not be a Bankrupt under that Circumstance; but it was replied, that a probable Cause will make a Bankrupt; and it was further alledged, that the Defendant was no Domestick Servant, being a Courier, and paid for each Journey, and neither living

Motion to

stay Proceed-

ings against

an Ambassa-

dor's Servant,

Stat. 7 Ann.

c. 12.

Ante 65.

Cases of Practice in the

Mic. 10 G. II. living in the House, nor receiving Wages by the Year, and that being registered in the Sheriffs Office was not material. The Court discharged the Rule to stay Proceedings.

In the Case of Toms and Hammond, *Mich. 7 Geo. II.* the Certificate was that the Defendant was a menial Servant to the Mecklenburgh Envoy, and held that a menial Servant was not within the Act, the Words of the Statute being Domestick, or Domestick Servant, who as such, are employed in and about the House, on Household Affairs only.

Mills against Johnson an Attorney.

Thomson.

Attorney no Privilege to change the Venue where he is Defendant.

Carib. 126.

* P. 135

A Motion was made to change the Venue, the Defendant insisting that being an Attorney he was only to be sued in Middlesex, where his Business required his Attendance; a Rule was granted to shew Cause; but the Court on * shewing Cause discharged the Rule, because the Defendant, tho' an Attorney, hath no Privilege, as Defendant, to be sued in Middlesex only.

Goodright

Court of Common Pleas.

Mic. 10 G. II.

Goodright *against* Hugginson.

Berret.

THE Question was, in what Sum Bail shall be given on Allowance of a Writ of Error in Ejectment; the Court allowed the Recognizance for a Year and half's Value of the Land, and for double the Costs, to be sufficient.

What Bail on Writ of Error in Ejectment. Post. *Goodtitle v. Benington.* See Stat. 11 Geo. II.

Sherlock, Executor, *versus* Temple.

Cooke.

A Rule to shew Cause why the Defendant should not have Leave to withdraw his Demurrer and plead the general Issue; the Plaintiff insisted, that it was not reasonable to give the Defendant that Liberty, since by the Demurrer he had admitted the Fact, and depended merely on the Matter in Law; but the Court were of Opinion that a Demurrer might be withdrawn if the Party came in a reasonable Time, on Payment of Costs; and they gave Leave accordingly.

S. C. Notes Pract. 243. Demurrer withdrawn on Payment of Costs. Ante Post *Hunt v. Puckmore,* East. 1737.

Cases of Practice in the

Mic. 10 G. II.

Gilbert *versus* Nightingale.

Thomson.

Motion for a new Writ of Inquiry for Smallness of Damages, denied.
Ante 89.

THE Plaintiff moved to quash his own Writ of Inquiry for Smallness of Damages; but the Court denied the Motion, and said that it was never granted, except for a Misdeemeanor in the Sheriff or other Officer.

Wright *versus* Kirswill.

Cooke.

S. C. Notes
Pract. 269.
Judgment and Execution after a Superseas.

* P. 136

A Superseas was granted to discharge the Defendant for the Plaintiff's not proceeding to Judgment; afterwards the Plaintiff proceeds to Judgment, and the Defendant being taken in Execution, now moved for a Superseas, the Defendant having been discharged on the former Superseas; the Court took Time to consider of it, and afterwards determined that the Defendant might be taken in Execution, though he * had been discharged for want of proceeding to Judgment; but if it had been for want of proceeding after Judgment to charge the Defendant in Execution, then it would have been otherwise, and he would have been intitled to his Discharge.

Bland

Court of Common Pleas.

Mit. 10 G. II.

Bland who as well, &c. *against* Featherstone.

Borret.

A Motion for Leave to compound for the several Sums for which the Action was brought, and granted by the Court, with the Consent of Mr. Serjeant Bootle for the Plaintiff.

Leave to compound on a *Qui tam.*

Note; A Rule for the same Purpose, without any Consent therein, was produced, which was made in the King's Bench in *Trin.* Term in the 6th Year of King Geo. II. *Dell who as well, &c. against Wyat.*

Lucas *against* Rudd.

Cooke.

A Rule to shew Cause why the Venue should not be changed, and after this Rule made, and before the Day of shewing Cause, the Defendant pleaded, which it was insisted on was a Waiving of his Rule; yet the Court made the Rule absolute, seeing his first Application to the Court to change the Venue, was made before the Plea pleaded.

S. C. Pract. Reg. C.P. 423. Venue changed, the Plea was given before the Day of shewing Cause. Ante 33, 57, 112, 126.

R.

Clarke

Cases of Practice in the

Mic. 10 G. II.

S. C. Pract.

Reg. C. P. 333.

See *Notes*

Pract. 269.

Prisoner discharged for want of proceeding to Judgment, may afterwards be taken in Execution, but where Defendant is discharged by *Superfedeas* for want of being charged in Execution, he shall be totally discharged, and can't be afterwards taken in Execution.

* *P. 137*

Wright v. Kirshawell, supra.

Clarke *against* Venner.

Cooke.

A Motion to discharge the Defendant out of Execution, who was before discharged for want of the Plaintiff's proceeding to Judgment; afterwards the Plaintiff proceeded to Judgment, and took the Defendant in Execution. Mr. Justice Denton said he had consulted with the Justices of the King's Bench, and one of the Judges told him that the constant Practice of that Court was, that where a Defendant is discharged for want of proceeding to Judgment, the Plaintiff may afterwards proceed to Judgment and take him in Execution thereon, and he shall not be discharged. But if the Plaintiff had proceeded to Judgment, and the Defendant was discharged for want of being charged in Execution, he should be totally discharged, and cannot after that be charged in Execution.

Whitehead

Court of Common Pleas.

Mic. 10 G. II.

Whitehead *against* Shaw, and the
same *against* Whitfield.

Borret.

ON a Motion to set aside a Judge-
ment, it was declared, that where
Application is made to a Judge for
Time to plead, and a Summons
granted, after the Rule to plead is out
such Summons must be look'd upon
as obtained by Imposition on the Judge,
and consequently the Plaintiff may
proceed notwithstanding such Sum-
mons.

*S. C. Notes
Pract. 180.
A Summons
after Rule to
plead out, no
Stay of Pro-
ceedings.
Ottiswell, v.
D'Alb, Trin.
10 & 11 G. II.*

Denny *versus* Wigg.

Cooke.

ON a Motion that the Court would
direct the Prothonotary to tax full
Costs, in an Action for the following
Words, spoke of the Plaintiff in his
Trade of a Grocer, *viz.* You sell your
Goods by false Weight, you sell but fifteen
Ounces to the Pound, and I never had of
you more than fifteen Ounces for a Pound
instead of sixteen. By the speaking of
which Words the Plaintiff is not only
hurt in his good Name, but several
Persons, to wit, R. B. and T. H. who

Full Costs, in
Slander, tho'
Damages un-
der 40 s.

R 2

before

Cases of Practice in the

Mic. 10 G. II. before were v^ont to buy Goodss of the Plaintiff in his Trade, have since left of Dealing with him. At the Trial a general Verdict was found for the Plaintiff and 10s. Damages.

*21 Jac. I.
cap. 16.*

It was insisted for the Plaintiff that the Special Damages took this Case out of the Statute; for this is no more than a Special Action upon the Case for the Special Damages by the Means of speaking of those Words, and the rather because no other Action could be brought for the Special Damages, for in order to introduce that, the Words that occasioned it, must be declared upon as they are in the present Case; and to support this, the following Cases were cited, *Cro. Car. 140, 163, 307. Salk. 206. Anderson versus Burton, Trin. 5 Geo. I. in B. R. Trespass* for putting infected Cattle into the Plaintiff's Close, per quod the Plaintiff's Cattle became infected; Verdict for the Plaintiff, and 5s. Damages; and ruled not to be within the Statute, three Justices against Eyre Justice; and the Plaintiff had full Costs. And *Carter versus Fish, and Philips versus Fish, Mich. 12 Geo. I.* * for Words you stole my Hen, by means of speaking which Words the Plaintiff was carried before a Justice and detained, &c. Verdict for the Plaintiff and 1s. Damages, and ruled by all the Court of B. R. that

* P. 138

Court of Common Pleas.

that both Plaintiffs should have full ^{Hil. 10 G. II.} Costs upon the Authority of Cro. Car. 163. which was said by Raymond, Chief Justice, to be a Case in Point.

For the Defendant it was said, that the Distinction was when the Words would or would not bear an Action of themselves; in the last Case the Plaintiff should have full Costs, but not in the former, and that it had been lately so adjudged in B. R.

Curia: There is no Foundation for such a Distinction; let the Plaintiff have full Costs.

Bracher *versus* Cotton. Hil. 10
Geo. II.

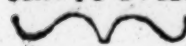
Cooke.

THE Cause at the first Assizes was made a Remanet, at the Second a View, at the Third the Cause was referred, and at the Fourth a Verdict was found for the Plaintiff.

*S. C. Notes
Pract. 97.
No Costs on a
Remanet or a
Reference.*

It was now moved for the Plaintiff, that the Costs of the first and third Assizes might be allowed; but the Motion was denied. The Prothonotaries all declared that no Costs could be allowed for the Remanet or the Reference, there being no Proceedings thereon, and that this is the Practice, except on a Reference there be an Agreement

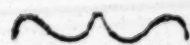
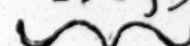
Cases of Practice in the

Hil. 10 G. II.  ment that the Costs should attend the Event of it.

Eyles, Bart. *versus* Smart,

Thomson.

What Costs
for a Special
Jury on the
Stat. 3 Geo. II.

 **A** Motion for Directions to the Prothonotary in taxing Costs for a Special Jury struck in this Cause by the Prothonotary, on the Stat. 3 Geo. II. cap. 25. for the better regulating of Juries, whereby it is enacted, That the Party applying for a Special Jury shall pay the Fees for striking such Jury, and shall not be allowed it on taxing the Costs. The Court declared they would not extend the *Ad* further than to the striking; the other reasonable Costs relating to the  * Special Jury are to be paid and allowed to the Party obtaining the Verdict in such Case.

* P. 139

Leaver *versus* Whicher.

S. C. Notes

Pract. 181.

Defendant not
allowed to
plead the
Statute of Li-
mitations after
a regular
Judgment set
aside.

Cooke.

IN this Cause a regular Judgment was set aside, and the Defendant had Leave to plead an issuable Plea, but he pleaded the Statute of Limitations.

The

Court of Common Pleas.

The Plaintiff moved to set aside that Plea, which was granted; for where the Defendant has had an Opportunity of pleading the Statute, but lets Judgment go by Default, and afterwards applies to set aside that Judgment, he shall not be let in, but upon Payment of Costs and pleading the general Issue. *Hil. 10 G. II.*

Note; Where a Plea of Justification was absolutely necessary to try the Merits, and the Plaintiff had not been delayed of a Trial, the Court have admitted the Defendant to make such Defence, tho' the Judgment set aside was regular.

And the Court in a like Case admitted an Administrator to plead *Plene administravit* generally, which was look'd upon as the general Issue. *Cruise v. Williams, Hil. 13 Geo. II.*

Sibson *versus* Niven, Widow.

Cooke.

AN Action for Words touching the Murder of the Defendant's Husband; the Defendant moved the Court for an Impar lance, because the Plaintiff was indicted for the Murder in the Admiralty Court, the Fact being committed upon the High Seas, and alleged that if this Cause be tried in this Court, the Strength of the King's Evidence

S. C. Pract. Reg. C. P. 225. Notes Pract. 148. Impar lance granted in Slander, Defendant being indicted.

Cases of Practice in the

Hil. 10 G. II.

Evidence would be discovered, and that this Action was only an Artifice of the Plaintiff's, to discover what Evidence the Prosecutrix had against him.

On great Debate, the Court granted an Imparance till next Term.

* P. 140

* King's Case.

Cooke.

S. C. Prae.

Reg. C. P. 219.

Attachment

against She-

riffs for not

bringing up a

Prisoner.

Stat. 31 Car.

II. cap. 2.

Ante 8.

Edmund's

Case.

A Motion for an Attachment against the Sheriffs of Bristol, for not bringing up the Defendant on a Habeas Corpus. It appeared that seven Guineas had been tendered to the Sheriffs, which was more than was due by the Statute, at 1 s. per Mile, but they refused to take it; and therefore the Court ordered an Attachment against them.

Note; The Sheriffs afterwards agreed to bring a *Habeas Corpus* at their own Expence, and pay the Defendant his Costs.

Mendes *versus* Woolfe,

Cooke.

Prisoner al-

lowed 2 s. 4 d.

per Week,

from each

Plaintiff.

THE Plaintiff desired to be excused from allowing the Prisoner 2 s. 4 d. per Week, he having already an Allowance of 2 s. 4 d. per Week at another Plaintiff's Suit. This being a new Point,

Court of Common Pleas.

Point, the Court took Time to consider of it, and afterwards gave their Opinion, that the Defendant should be allowed 2 s. 4 d. per Week from every Plaintiff that should insist on his being detained in Execution, *East. 10 G. II.*

Newman *versus* Harrison, an Attorney. *East. 10 Geo. II.*

Cooke.

THE Defendant had been summoned to attend a Judge of this Court, and was taken in Execution while he was attending in order to wait upon the Judge; the Plaintiff produced an Affidavit, that the Defendant owned he was then at Leisure, and accordingly then went with the Plaintiff to a Coffee-house, and gave his Opinion in a Case that was then proposed to him; this Matter was in a great Measure denied by the Defendant's Affidavit; and it appearing to be a Contrivance of the Plaintiff, to seduce the Defendant from attending on his Business, and make him liable to be taken in Execution; the Court was of Opinion, that it was still a Violation of the Privilege allowed to Attornies, and discharged the Defendant.

Attorney attending a Judge, taken in Execution, discharged. *Ante Garden and Sheers, 60. Piggot and Charlwood, 102. Griffith and Brown, 64. Morley and Grub, 104.*

Dawson

Cases of Practice in the

East. 10 G. II.

* P. 141

* Dawson against Garth.

Borret.

A Rule to plead not necessary, where a Judge has given Time to plead.

THE Defendant had obtained a Judge's Order for Time to plead, but not pleading within the Time limited by the Order, the Plaintiff signed Judgment.

It was objected that no Rule to plead was given; but the Court said that the Judge having given Time to plead, there was no Occasion for a Rule, so the Judgment was held regular.

Hunt against Puckmore.

Borret.

Leave to withdraw a Demurrer and plead issuably on Payment of Costs, after Plaintiff had lost the Benefit of a Trial, being in Case of an Heir.

*Sherlock v.
Temple, Mich.
10 Geo. II.*

A Motion that the Defendant might be at Liberty to withdraw his Demurrer, and to rejoin issuably to the Plaintiff's Replication; a Rule Nisi was made; on shewing Cause it was objected, that the Plaintiff had lost a Trial; but on the other Hand it appeared that the Defendant being sued, as Heir to his Father, and having pleaded Riens per Discent, had by the Mistake of his Counsel, (as was owned) demurred to the Plaintiff's Replication, wherefore it was urged that it would

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would be extremely hard upon him, if *East. 10 G. 11.*
he should not have Leave to withdraw his Demurrer, and plead issuably; the Counsel confessing he had mistaken the Law, and Judgment (it was not doubted) would be given for the Plaintiff on the Demurrer, which would be to recover his whole Debt against the Defendant, tho' he had very little Assets descended to him; the Defendant was willing to satisfy the Plaintiff's Debt, so far as Assets had descended, which might be tried on the Issue of *Riens per discent.* The Court considering the Circumstances of the Case, granted the Motion on Payment of Costs, notwithstanding the Plaintiff had lost an Opportunity of trying his Cause. Hawkins for the Defendant; Wright for the Plaintiff.

Note; It was mentioned again the next Day by Mr. Justice *Denton*, that this Rule was contrary to the established Practice of the Court, but it was answered, that tho' the general Practice is, that after a Trial lost the Court will not permit a Demurrer to be withdrawn, yet this being so particular a Case, and the Circumstances therein so hard on the Defendant, it was more reasonable to let the Rule stand as pronounced, than to suffer so manifest an Injustice to fall on the Heir at Law.

Cases of Practice in the

Tri. 10 G. II.

** P. 142* Ottiwell *against* D'Ath. *Trin. 10*
Geo. II.

Thomson.

S. C. Notes
Pract. 182.
Summons for
Time to plead
after Rule out
no Stay of
Proceedings.

A Motion made to set aside a Judgment, which had been signed after a Summons for Time to plead taken out and served on the Plaintiff's Attorney; but it appearing that the Summons was taken out after the Expiration of the Rule to plead, the Court said that the Plaintiff was not obliged to take Notice thereof, and held the Judgment to be regular, but set the same aside on Payment of Costs, and pleading the general Issue.

Goodtitle *against* Bennington, and
others.

Cooke.

S. C. Pract.
Reg. C.P. 179.
Notes Pract.
70.
What Bail in
Error, after
Verdict in E-
jectment.

A Motion to oppose Justifying Bail in Error after Verdict in Ejectment; because by the Statute of 16 & 17 Car. II. cap. 8. after Verdict in Ejectment or Dower, the Plaintiff in Error must be bound to the Plaintiff in the Original Action.

The Clerk of the Errors certified that the Practice has been sometimes for the Plaintiff in Error to become bound,

Court of Common Pleas.

bound, and sometimes to put in Bail, *Mic. 11 G. II.*
and oftner so than otherwise.

The Court said they would not prevent justifying the Bail, however the Practice had been, and the Bail was accordingly justified.

Afterwards in Michaelmas Term the 11th Geo. II. a Motion was made for Leave to take out Execution, because the Plaintiffs in Error were not bound as the aforesaid Act directs; it was said that if the Defendant in Error thought he was intitled, and should proceed to Execution, it would be at his own Peril.

Note; In the Case of *Doe v. Lushington*, *Postea, Mich. 12 Geo. II.* this Point was again debated, and it was then likewise held, that the Plaintiff in Error need not become bound.

* *Atwood against Meredith.* *Mich. 11 Geo. II.* * *P. 143*

Cooke.

*S. C. Prae.
Reg. C.P. 249.
Notes Prae.
216.*

A Rule to shew Cause why Proceed-
ings should not stay; a Copy of
the Special Writ (in which the Da-
mages were laid above 10 l.) having
been served without any Notice to ap-
pear, and the Appearance entered by
the Plaintiff for the Defendant, where-
as it should have been served with No-
tice, *Linaker v. Hudson, a Case in B. R. ruled on this Motion.*

Cases of Practice in the

Mic. 11 G. II. tice, tho' the Debt was above 10l. for the Acts of the 12 Geo. I. and 5 Geo. II. in this Case are to be taken as one Statute; the Rule was made absolute.

Simpson *against* Duffield and his
Wife, Administrators.

Cooke.

*S. C. Notes
Pract. 183.*
Defendant
shall have the
same Time
after Oyer gi-
ven, as was
unexpired
when Oyer
was demand-
ed.

*Ante Ham-
mond v. Hor-
ner, 72.*
Littlehales v.
Smith, ibid.
Theedham v.
Jackson, 81.
Blaxland v.
Burgefs, 95.

A Rule to shew Cause why Judgment should not be set aside; it appeared the Rule to plead was given on Monday the 24th of October, and was out the Thursday after, Oyer was demanded on the Wednesday and given on the Thursday, and Judgment was signed on the Friday in the Afternoon.

Curia; The Plaintiff's Attorney should have stayed and not signed it till Saturday in the Afternoon, for the Defendant shall have the same Time to plead after Oyer given, as he had when Oyer was demanded.

Craven

Court of Common Pleas.

Mic. 11 G. II.

Craven *against* Handley.

Borret.

A Motion for Leave to enter a Judgment *nunc pro tunc*, and a Rule for Defendant's Executor to shew Cause; the Case was, the Defendant pleaded a bad Justification, the Plaintiff joined Issue, and a Verdict was for the Defendant; but the Issue being immaterial, a Rule was granted to stay the Entry of the Judgment on the Verdict, and for Leave for the Plaintiff to sign Judgment, the Trespass being confessed by the Plea; whilst this Matter was under the Consideration of the Court the Defendant died.

And now on shewing Cause for the Defendant's Executor it was insisted that the Plaintiff had delayed himself by * joining in an immaterial Issue, and therefore ought to suffer; on the other Side it was said, that it would be very hard the Plaintiff should suffer, while the Court does a Thing for the Advancement of Justice.

Curia; The Party must not suffer by the Court's taking Time to consider, let the Rule be made absolute.

S. C. Pract.

Reg. C.P. 240,

242.

Notes of Pract.

184.

Leave granted

to enter Judgment

nunc pro

tunc. Crisp &

al' v. The

Mayor of Ber-

wick, 1 Sid.

162. *Paulet*

v. Delander,

Trin. 1 Geo. I.

in B. R.

Taylor v.

Matherus,

Hil. 2 Geo. I.

in B. R.

* P. 144

The Queen v.

Inhabitants of

Hornesey,

Hil. 11 Ann.

B. R. Judgment

entered

35 Years after

the Party's

Death.

Brown

Cases of Practice in the

Mic. II G. II.

Brown *against* Godfrey.

Thomson.

S. C. Notes
Pract. 185.
Judgment set
aside because
the Judge's
summons was
not first dis-
charged.

A Judge's Summons for Time to plead, the Defendant's Attorney did not attend, the Plaintiff's Attorney signed Judgment; but the Court set aside the Judgment, because the Plaintiff's Attorney should have first discharged the Summons.

Rivers and another *against* Plumbe,
East. 5 Geo. II. the like Resolution.

Simpson *against* Warren.

Cooke.

Motion by a
Prisoner for a
Superfedeas
denied, Affi-
davit of the
Debt having
been made in
B. R.

A Motion for a Superfedeas, because there is no Affidavit of the Debt in this Court, the Defendant being a Prisoner, and a Rule was made to shew Cause. The Case was, an Affidavit of the Cause of Action had been made in the King's Bench, and Defendant arrested by Latitat, after the Arrest the Defendant removed himself by Habeas Corpus to the Fleet, and the Plaintiff declared *against* him there, but the Person who made the Affidavit being gone abroad, the Rule of this Court, Hil. 8 Geo. II. for making an Affidavit of the Debt, and certifying it on

Court of Common Pleas.

on the Declaration, could not be complied with; but it appearing, by a Copy of the Affidavit of the Debt made and filed in the King's Bench, to be the same Cause of Action, the Court discharged the Rule, being of Opinion that that * Rule extends only to Cases where the Delivery of a Declaration against Prisoners is the first Proceeding.

Mic. 11 G. II.

** Reg. Hil.
Geo. II.*

* Grimes against Clever.

** P. 145*

Thompson.

MOTION to set aside an interlocutory Judgment, for a Defect in the Notice of the Declaration served on the Defendant, but it appearing that a Writ of Inquiry was executed, the Motion was denied; the Defendant should have applied two Days before the Day appointed for the Execution of the Writ of Inquiry.

S. C. Notes

Pract. 186.

*Motion to set
aside Judgment denied,
coming too
late.*

Ante Smith v.

Jenks 69.

Jamet v.

Voyer, 105.

Morse v.

Farnham, 92.

Note; It was said that when the Irregularity complained of is in the Copy of the Process, or the Notice subscribed thereto, the Complaint must be made before Judgment is signed; but if it be in the Delivery or Notice of the Declaration, then Complaint must be made two Days before the Execution of the Writ of Inquiry.

Cases of Practice in the

Hil. 11 G. II.

Girdler, Serjeant at Law, *against*
Watthews. *Hil. 11 Geo. II.*

Cooke.

S. C. Praet.

Reg. C.P. 420.

Notes Praet.

342.

A Serjeant suing as a common Person, loses his Privilege, and Venue changed.

Ante Welland

v. Funial, 132.

ON a Motion to change the Venue, the Question was, Whether the Plaintiff not suing by Writ of Privilege, but suing as a common Person by Original, should have the Benefit of his Privilege, to retain the Venue in Middlesex: It was held that he loses it, and the Venue was changed.

Roundel *against* Powel.

Thompson.

S. C. Notes

Praet. 187.

Leave to enter Judgment on an old Warrant of Attorney, the Defendant being in Jamaica.

* P. 146

MOTION for Leave to enter Judgment against the Defendant, on a Warrant of Attorney after a Year: To shew that the Defendant was alive, it was sworn in the Affidavit, that he was seen in Jamaica the 13th of September last, and that the Deponent sailed from thence the 17th of that Month, and arrived in London the 15th of January * following; the Court made a Rule for Leave to enter the Judgment, the Application being made by the Plaintiff as soon as he could well do it.

Note;

Court of Common Pleas.

Note; Where a Warrant of Attorney *Hil. 11 G. II.*
has been executed twenty Years or up-
wards, the Court will not grant an absolute
Rule to enter Judgment on the usual Affi-
davit, (that the Warrant was duly executed,
the Debt unpaid and the Parties living) but
the Rule will be to shew Cause.

Smith *against* Hoff.

Thomson.

A Motion to set aside a Verdict for Ir-
regularity in the Notice of Trial;
the Plaintiff had countermanded his
Notice of Trial for the second Sit-
tings in Term, and at the same Time
continued the Notice till the third Sit-
tings, which being contradictory, the
Defendant made no Defence; the
Court said the Plaintiff should have con-
tinued it only, and set aside the Verdict.

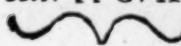
S. C. Notes
Pract. 216.
Notice of
Trial both
countermand-
ed and conti-
nued is ill.
Reg' Cur'
Mich. 1654.
sec. 21.

Davies *against* Powell and others.

T Respass for entering the Plaintiff's
Close, called the Park, and ta-
king his Deer; the Defendants as
Servants to the Lord Cadogan, justify
the taking as a Distress for Rent in
Arrear. To this Plea the Plaintiff
demurred generally; after several Argu-
ments

*Deer distrain-
able for Rent.*

Cases of Practice in the

Hil. 11 G. II.  ments on both Sides, the Lord Chief Justice delivered the Opinion of the Court.

The Question is, Whether these Deer were distrainable? It's insisted that they were not. First, Because they are *feræ Naturæ*. Secondly, Because they are Hereditaments. Thirdly, Because Part of the Thing demised. And fourthly, Because such a Distress was never known before. To the First they cite Finch 176. Co. Lit. 47. a. 1 Rol. Abr. 666. 3 Lev. 227. and several other Authorities, That they are not distrainable, 3 Inst. 109, 10. 1 Hawk. Pl. C. 94. 7 C. 47 a. 56. the Case of the Swans, but the Register 202. (and which is a Book of the greatest Authority in the Law) shews that this Rule is not a general Rule. The Reason why Deer are said not to be distrainable, is because they were considered as Things not of Profit, and in which no Man could have a valuable

 * P. 147 * Property; but that fails now, the Plaintiff himself admits that a Man may have a Property in them by bringing this Action, in which he calls them his, and the Defendants likewise justify and say that they took the Deer, being the Property of the Plaintiff, and that they sold them for Eighty-seven Pounds, which plainly imports that

Court of Common Pleas.

that a Man may have a Property in them, and in this Case a Valuable one, and this is confessed by the general Demurrer. Hil 11 G. II

The 3d Inst. ^{110.} ~~410.~~ H. Pl. Cor. ^{p. 68} makes the Difference between tame Deer and Deer at large in a Forest; but if so, they must be taken to be tame Deer in this Case.

As to the second Reason because they are Hereditaments, Co. Lit. 53. a. 5 Co. 17. Hereditaments are not distrainable, and Deer in a proper Park may be so far a Part of the Inheritance of that Park as not to be distrainable, but this cannot be taken to be such a Park, but only a Park in Reputation. Hale's Hist. 421.

As to the third Reason, that the Deer were Part of the Thing demised, the Case of Tithes was mentioned, but that is not to the Purpose, because Tithes are not properly demisable, nor a proper Rent reservable upon it, but only a Personal Contract; we agree that generally a Part of the Thing demised is not distrainable, but in this Case it appears that the Deer were not Part of the Demise, because saleable before the End of the Term.

A Reason ab inusu is generally a good Reason, but the Nature of Things may in Time change; it is now well known they are become Chattels of Profit,

Cases of Practice in the

Hil. 11 G. II.

Profit, and the Practice of Grazing so general, as to be deemed a good Improvement of a Farm; the Reason of this Thing therefore being altered, the Law must vary with it.

We are all agreed, that these Deer upon all the Circumstances of this Case, were properly distrainable, Judgment for the Defendants.

* P. 148

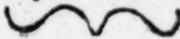
* *Horry against Bant.*

Avowry amended after Argument on Demurrer.

IN Replevin; the Avowry was for Rent in Arrear, and sets forth a Demise of the locus in quo at 7l. per Annum, payable Quarterly, and that 11l. 4s. was in Arrear for a Year and three Quarters Rent, and that therefore the Distress was made: A general Demurrer to this Avowry, because no such Sum as 11l. 4s. could be in Arrear, the Cause was put in the Paper and spoke to, and this Mistake of 11l. 4s. instead of 12l. 5s. being insisted upon, it went off, and now the Avowant moved for Leave to amend, and notwithstanding it had been once spoken to, the Court made a Rule for the Amendment, on Payment of Costs.

Note; For the Amendment were cited 3 Lev. 347. and Middleton versus Crofts, in B. R. Mich. 8 Geo. II. In Prohibition, an Amend-

Court of Common Pleas.

Amendment after the Cause in the Paper *East. 11 G. II.*
had been twice spoken to. 

Rushell *against* Gately. *East. 11*
Geo. II.

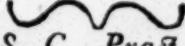
Thomson.

THIS was an Action for a malicious Prosecution for Forgery; upon an Affidavit the Plaintiff had obtained a Judge's Order for holding the Defendant to Bail for 200 l. for the Defendant being arrested and held to Bail accordingly, applied to the Judge who made the Order, the Judge not being fully satisfied, directed the Defendant to apply to the Court, whereupon he moved the Court to be discharged on entering a Common Appearance, and by Affidavits shewed that the Plaintiff was acquitted on a Flaw in the Indictment and not on the Merits.

S. C. Pract. Reg. C. P. 66.
Whether Bail for malicious Prosecution, the Plaintiff having been acquitted on a Flaw in the Indictment and not on the Merits.

Cur': Let the Plaintiff shew Cause why a common Appearance should not be taken.

* Ibbotson *against* Brown.


* P. 149


A Motion for Directions to the Prothonotary to allow the Plaintiff full Costs, on the Authority in 2 Lev. 234. The Case was Trespas for breaking

S. C. Pract. Reg. C. P. 110.
Of full Costs in Case of special Pleading.

Cases of Practice in the

East 11 G. II. ing his Close, &c. the common Bar, and new Assignment, to which the Defendant pleaded Not Guilty, a Verdict for the Plaintiff at York Assizes, and the Jury gave 5 s. Damages and 40 s. Costs.

On shewing Cause it was insisted for the Defendant, that this was no Special Pleading, and therefore the Case in Levinz is an Authority in Favour of the Defendant.

Cur': 'Tis no Special Pleading, the new Assignment is only to ascertain the Place; the Rule must be discharged.

In the same Cause it was moved, that the Associate might correct his Minutes, by reducing the Costs of 40 s. (which he had minuted) to 5 s.

Jury not
bound as to
Costs by Stat.
22 & 23 Car.
II.

Cur': It has been often held that the Statute 22 & 23 Car. II. cap. 9. does not restrain the Power of the Jury, but they may give what Costs they think fit, as in other Cases, it only restrains the Court from giving Costs de Incremento.

Court of Common Pleas.

Trin. 11 & 12

Geo. II.

Hayward an Attorney *against* Deni-
son. *Trin. 11 & 12 Geo. II.*

Thomson.

A Rule Nisi was made for setting a-
side an Attachment of Privilege,
issued the 21st of January, and return-
able the 30th of January, because there
were not fifteen Days between the
Tesse and Return.

Attachment of
Privilege
should have
15 Days be-
tween the
Tesse and Re-
turn.

On shewing Cause, the Counsel for
the Plaintiff refer'd to the Statute 13
Car. II. and the Prothonotaries said
they did not know that the Practice re-
quired fifteen Days between the Tesse
and Return, but that usually there
were eight, and sometimes four Days.

Curia: If the Practice had warranted
a Return in eight Days, then that
would have been a Part of the Privi-
lege; but as it is sometimes eight
Days and sometimes four, nothing
seems to be settled by the Practice; in
the King's Bench their Practice has
settled the Return of their Writs of
Latitat, &c. at eight Days. The Com-
mon Law requires fifteen Days be-
tween the Tesse and Return of all
Writs; and if the Practice has not set-
tled it otherwise, the Law ought to
prevail

Cases of Practice in the

Trin. 11 & 12 Geo. II. prevail in this as well as in other Cases.

The Rule was accordingly made absolute.

* P. 150

* *Ellison against Newton.*

Plea of Privilege ill, as not saying *suit Attorn' tempore Impetrationis & vis Original'.*

IN Abatement of the Writ, the Defendant pleaded, That he was and is an Attorney, and therefore ought to be sued by Bill, and not by Writ. To this Plea the Plaintiff demurred generally. On arguing the Demurrer, it was objected, on the Behalf of the Plaintiff, that the Plea does not say that the Defendant was an Attorney at the Time of the suing out the Original Writ.

1 *Salk. 1 pl. 2.*
6 *Mod. 105,*
106.
1 *Vent. 154.*

For the Defendant it was insisted, that this is only Matter of Form.

Cur': It is Matter of Substance, let the Defendant answer over.

Penrice against Jackson.

S. C. Pract.
Reg. C. P. 416.
Notes Pract.

343.
Verdict set aside, 24 Jurors being returned on the *Venire* and 48 on the *Habeas Corpora. Stat. 3 Geo. II.*

A Motion to set aside a Verdict without Costs, and a Rule Nisi.

The Defendant had made no Defence at the Trial, because the Sheriffs of Worcester had returned but 24 Jurors on the *Venire*, but finding their Mistake, had on the *Habeas Corpora* returned

Court of Common Pleas.

turned 24 more, so that the Defendant could not challenge the Array as insufficient at the Time of the Trial, nor have any other Redress of this Matter than by Motion.

Trin. 11 & 12

Geo. II.

Curia : Imperfect Returns may be helped by the Statute, but here the Fault is Matter of Fact, the Rule must be made absolute,

Sellen *against* Chamberlain.

A Motion was made to put off a Trial that was to come on the next Day, but refused, because such Motions by the Practice of the Court should be made at least two Days before the Day of Trial.

S. C. Notes

Pract. 325.

Motion to put

off a Trial

should be

made two

Days before

the Day of

Trial.

* Shipman *against* Thompson. * P. 151

THIS was a Case reserved at Lincoln Assizes for the Opinion of the Court on the Construction of the Stat. 2 Geo. 2. cap. 22. sec. 11. The Case was the Plaintiff's Husband, to whom she was Executrix, had, by Letter of Attorney, appointed the Defendant his Steward; the Defendant received of the Tenants several Sums of Money for Rent after the Testator's Death. The Plaintiff brought this Action in her

S. C. Pract.

Reg. C. P. 268.

Where an Ex-

ecutrix de-

clares in her

own Right,

the Defendant

cannot set off

a Debt due

from the Tes-

tator.

Cases of Practice in the

Trin. 11 & 12
Geo. II.

her own Name, and not as Executrix, for the Money so received, as received to her Use; Notice was given to set off against the Plaintiff's Demands certain Sums that were due from the Testator to the Defendant; but at the Trial the Defendant was not admitted to set off what was due from the Testator to him, because the Plaintiff had not declared as Executrix, but in her own Right; and now two Questions were raised, First, Whether the Plaintiff ought not to have declared as Executrix. Secondly, Whether the Defendant ought not to have been admitted to set off his Demands.

Curia: Here are two Questions, which are in Effect but one; and the single Question is, Whether the Action be rightly brought?

Carthew 355.
6 Mod. 91,
128.

Where a Cause of Action accrews after the Death of the Testator, it is most proper for the Plaintiff to sue without naming himself Executor, and it's such a Case as the Plaintiff, tho' named Executor, would be liable to pay Costs, in Case of a Nonsuit or Verdict, and it's doubtful whether the Plaintiff in this Case, should sue as Executrix, would not be liable to pay Costs on a Nonsuit, the Reason given in 1 Salk. 314. a very bad one, in 1 Salk. 27, 207. it is said to be determined on another Point; as there is nothing in the

Court of Common Pleas.

the Defendant's Objections, so the Plaintiff must have the Benefit of her Verdict. *Mic. 12 G. II.*

Bennet *against* Skinner. Idem *a-*
gainst Sydenham. *Mich. 12 G. II.*

ON a Motion to set aside an Outlawry, the Court held that the Defendant's own Affidavit of his being a visible Person, without a like Affidavit by his Neighbours, is not a sufficient Foundation to set aside an Outlawry.

S. C. Notes
P. 226.
What Proof
of Defendant's
being a visible
Person neces-
sary to set a-
side an Out-
lawry.

* Watson *against* Lewis.

* *P. 152*

MOTION to make a Rule absolute for altering the Venue from Middlesex to Surry; but on producing the Declaration it appeared to be an Action on a promissory Note only; therefore the Rule was discharged.

Venue not
to be changed
in an Action
on a promissory
Note only.

White *against* Washington.

MOTION to set aside the Proceedings against the Defendant for several Mistakes in the Capias and Copy served, viz. First, In the Direction to the Sheriff, the Word To was left

S. C. Notes
Pract. 298.
Proceedings
set aside for
Irregularity in
Process, and
Rule for At-
torney to shew
Cause why he
should not pay
the Costs.

Cases of Practice in the

Mic. 12 G.II. left out. Secondly, The Word Take omitted. Thirdly, The instead of She, and Fourthly, In the Notice it was for the 20th of October, without saying next or this Instant, which Mistake alone, it was insisted, would have been fatal, had the Capias been Right. A Rule Nisi was made, and on shewing Cause it was argued for the Plaintiff, that the Defendant did not come in Time, the Declaration being filed, and a Rule given to plead.

*See Stat. 5
Geo. I. c. 13.
as to Errors
in Writs.*

Curia: This is a very great Negligence of the Plaintiff's Attorney in not making the Process right, and an Offence to the Court, in making their Process erroneous, especially where the Chief Justice is the Witness. The Application is not too late, it may be any Time before Judgment. Let the Rule be made absolute, and another Rule granted against the Plaintiff's Attorney, to shew Cause, why he should not pay the Costs of the Proceedings, Motions, &c. on both Sides, occasioned by his Mistakes.

Court of Common Pleas.

Mic. 12 G. II.

Doe *against* Lushington, on the De-
mise of Godfrey.

MOTION for Leave to take out Execution after Error in Ejectment, and Rule Nisi. On shewing Cause, the Question was, Whether Bail by two Strangers for the Tenant in Possession, be sufficient Bail on Error in Ejectment, the Statute 16 & 17 Car. II. requiring that the Plaintiff in Error in such Case should himself enter into the Recognizance. For the Tenant it was insisted, that it had been the Practice to put in other Bail, that if good Bail be put in, it's sufficient and answers the Intent of the Statute, * and that as Bail in Error cannot be put in before a Commissioner in the Country, the Inconvenience would be great, for the Plaintiff to make a Journey from the furthest Part of the Kingdom, when the Purpose may as well be answer'd without it.

On the other Side it was said that the Tenant of the Land was the best Security, and the Words of the Statute require his becoming bound in the present Case.

Cur': The Practice of taking other Bail hath expounded this Statute, and there is no Inconvenience as the Security

S. C. Pract.
Reg. C.P. 180.
Notes Pract.
76.
What Bail on
Error in Eject-
ment.

3 Lev. 375.
Carters 121.

* P. 153

Cases of Practice in the

Mic. 12 G. II. curity is bettered; and tho' this Construction is not within the Letter, it is within the Equity of the Statute, and it's so settled by the Practice of all the Courts; the Rule must be discharged.

Clarke *against* Swift.

Double Pleas.

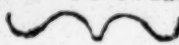
MOTION for Leave to plead double, Non Assumpsit and a Cross Demand, and granted.

Stibbs against Nives, Trin. 10 Geo. II. Borret, In Trespass, the Court gave
This was not opposed. Leave to plead, Not guilty and Liberrum Tenementum.

Jones against Body, East. 12 Geo. II. Leave given to plead Non Assumpsit and the Defendant's Discharge under the Insolvent Debtors Act; and *Lisle against Jennyns* the same Term, Non est factum, and the Defendant's Discharge under the said Act.

Baynes against Lutwich, Trin. 11 & 12 Geo. II. Leave given to plead a Distress for Damage-feasant, and for Rent in Arrear. And *Church against Fendall, Easter 11 Geo. II.* Damage-feasant, and under a Demise from Defendant to Plaintiff. And *Bird against Spinks, Mich. 10 Geo. II.* Leave to plead, that Plaintiff

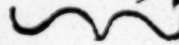
Court of Common Pleas.

tiff in Replevin had not Property, and *Mic. 12 G. II.*
a Justification as a Distress for Rent. 

Wisbetch *against* Fryar, Mich. 8 Geo.
II. A Motion by an Heir for Leave to
plead Solvit ad diem and Riens per de-
scent, and granted.

Heathfield *against* Allen, Mich. 8 Geo.
II. Leave given an Executor to plead
Non Assumpsit and Plene Administravit.

* Note; Affidavit must be made by the
Executor or Administrator, that he hath
fully administrated, and by the Heir that he
hath nothing by Descent, before Motion.


* P. 154


The following double Pleas have been Contradictory
denied as Contradictory. double Pleas.

Non Assumpsit and a general Release.
Gibson *against* Cole, Hil. 6 Geo. II.

In Trespass, Liberum Tenementum,
and a Justification in removing a Nu-
sance. Halsey *against* Feltham, Trin 6 &
7 Geo.

To an Action against an Innkeeper
for detaining a Horse, Not guilty, and
an Accord and Satisfaction. Dursley *a-*
gainst Cole, Hil. 7 Geo. II.

T

In

Cases of Practice in the

Hil. 12 G. II. In Trespass, Not guilty, and a Justification. *Barnet against Greaves*, *Hil. 10 Geo. II.*

Buck against Warren, *East. 10 Geo. II.* Non Assumpsit and Non Assumpsit infra sex annos denied, after Money had been brought into Court; the same denied after the Defendant had pleaded singly Non Assumpsit. *Nevil against Fisher*, *Hil 10 Geo. II.*

Nil habuit in Tenementis may be given in Evidence, on a Plea of Nil debet. *Marshal against Lawrence*, *Trin. 8 & 9 Geo. II.*

Motion to plead Double may be made any Time before Judgment. *King against Boswell*, *Mich. 7 Geo. II.*

Leighton against Leighton, *Mich. 10 Geo. II.* Leave given to plead double after a Judge's Order for Time to plead.

** P. 155* *Horsfull against Greenwood and others.* *Hil. 12 Geo. II.*

Defendant may waive his special Plea, and plead the general Issue the same Term, without Costs.

THE Defendants, in Hilary Vacation, pleaded several special Pleas, but in the same Vacation, before Replifications

Court of Common Pleas.

tations were delivered, withdrew those Pleas, and pleaded the general Issue. *Hil. 12 G. II.*

Per Cur' : After a special Plea pleaded, tho' the Plaintiff has prepared his Replication, yet the Defendant may the same Term, before the Delivery or filing of the Replication, waive his special Plea, and plead the general Issue without paying Costs.

Plumb *against* Savage and Wife, on
the Demise of Bryan.

MOTION for an Attachment for Contempt, and Rule Nisi. *S. C. Notes Praet. 124.*
The Case was, A Declaration in Ejectment had been delivered to the Tenant in Possession, but he refusing to appear, Savage and his Wife were admitted to defend, pursuant to the Stat. 11 Geo. II. and after they had pleaded, the Tenant, (just before the Expiration of his Lease) delivered the Possession to one Reeves on the Behalf of the Lessor of the Plaintiff; thereupon the Defendants obtained this Rule against the Lessor and his Attorney, for gaining the Possession in this Manner, and then not proceeding in the Cause; but on shewing Cause both the Lessor and his Attorney denied any Practice with the Tenant. *Landlord made Defendant, and Tenant delivers Possession, no Contempt.*

Cases of Practice in the

Hil. 12 G. II. Curia: This is no Contempt, the Rule must be discharged.

Walsh, Assignee of the Sheriff of
Middlesex, against *Haddock*.

Exception to
Bail waived
by proceeding
in the Original
Cause.

* P. 156

THE Defendant became Bail to the Sheriff for the Appearance of W. R. at the Return of the Writ, Bail was filed above, but excepted to, and that Exception entered on the Bail-piece. Afterwards without any complete Justification, the Plaintiff delivers his Declaration generally, and proceeded to Issue, Trial and Judgment, and then brings this Action; to which the Defendant pleaded *comperuit ad diem*, * and in order to maintain that Plea, the Court was now moved for Leave to strike out the Exception on the Bail-piece, that it might be filed, insisting that the Proceeding generally was a Waiver of the Exception.

Curia: Let them shew Cause.

Webb,

Court of Common Pleas.

East. 12 G. II.

Webb, Administrator of Russel, against *Spurrel*. *East. 12 G. II.*

THE Plaintiff's Intestate in Trinity Term 10 Geo. II. obtained a Verdict against the Defendant, and the now Plaintiff brought an Action on that Judgment. The Defendant, in Hilary Term last, pleaded Nul tiel Record, and now moved to stay the Entry of that Judgment, Affidavit being made that no such Judgment was actually entered on Record within two Terms after the Verdict, according to the Stat. 17 Car. II. cap. 8. A Rule Nisi was granted.

*S. C. Notes
Pract. 191.*
Action by an Administrator on a Judgment signed in the Life of the Intestate, but not entered on Record.

On shewing Cause, it was argued for the Plaintiff, that tho' the Judgment was not entered on Record according to the Statute, yet it appeared, by the Postea and the Prothonotary's Book, to have been signed the 19th of October, and therefore was a Judgment of Trin. 10 Geo. II. that it is the Duty of the Clerk of the Judgments to enter the Judgment, he being paid for it, at the Time of signing, tho' they are seldom entered till wanted; that as the signing Judgment is the Act of the Court, it is supposed to be entered instantanter; and that it is the Course of the Court to enter Judgments of the Term they are signed.

Cases of Practice in the

Tri. 13 G. II. The Court said this Practice might be of ill Consequence to Purchasers and others, but enlarged the Rule.

Note; The Plaintiff's Attorney on signing final Judgment had taken away the *Postea*, and had not brought it back to the Office till within some few Days before the Motion. The Court, to the Intent the Clerk of the Judgments might not, by such Practice, for the future be hindered from entering Judgments immediately on Record, and to prevent Inconveniences to Purchasers and others, in searching the Prothonotaries Books, made a general Rule,

Vide Trin. 13 Geo. II. reg. 2. That from and after the last Day of this Term, all Postes and Inquisitions whereon final Judgments are signed, should immediately be left with the Clerk of the Judgments.

* P. 157 * Creak and Creak, Administrators, against Pitcarne. *Trin. 13 G. II.*

S. C. Pract. Reg. C.P. 118. No Costs payable by an Administrator on a Nonsuit upon a Prohibition obtained by him. **T**HE Plaintiffs as Administrators of J. C. were sued in the Consistory Court of Norwich, for Tithes of some Marshes due from the Intestate in his Life-Time, whereupon they alledged a Modus, and here obtained a Prohibition, with Directions forthwith to declare, in order to try the Merits of the Suggestion; the Plaintiffs accordingly did declare, and the Defendant after denying

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ing his Proceeding in the Court below, *Tri. 13 G. II.*
after Prohibition delivered, for Consultation alledges that there is no such Modus, and thereupon Issue is joined; at the Lent Assizes for Suffolk 1738, the Defendant having given due Notice of Trial, enters the Record; and the Cause being called, the Plaintiffs were nonsuited without offering any Evidence. Upon this the Defendant being intitled to Judgment, and a Consultation, applies to the Prothonotary to tax his Costs; but that being opposed by the Plaintiffs, and the Prothonotary desisting, the Court was now moved by the Defendant for Directions in taxing the Costs in this Suit and the Costs of the Suggestion, six Months being elapsed since the granting of the Prohibition, and the Suggestion being not proved.

For the Defendant it was insisted, First, That as this Suit arose since the Death of the Intestate, they are to pay Costs, for the same Reason that Plaintiffs in Trover or other Actions arising in their own Time are not excused from Costs. Secondly, That they are in this Case to be considered as mere Defendants, this Suit being commenced only to stop the now Defendants Proceeding against them in the Court Christian, where they were mere Defendants, Executors, Admini-

Cases of Practice in the

Fri. 13 G. II. Executors, when Defendants being in all Cases liable to Costs on Judgments given against them.

Thirdly, That there is no Exception in Favour of Administrators in the Stat. 3 Ed. VI. cap. 13. therefore the six Months being elapsed, and no Proof made of the Suggestion, the now Defendant is intitled to his double Costs.

Fourthly, That the Plaintiffs not appearing or attempting to prove the Modus in the present Case, were nonsuited by their own wilful Default, and in all Cases of wilful Defaults in Executors or Administrators, as not going on to Trial pursuant to Notice, suffering Judgment for want of a Replication or the like, they are always liable to Costs, ever since * the Stat. 23 H. 8. cap. 15. and this very Point had been so settled in the King's Bench, Hil. 4 Geo. I. *Willis against Brown.*

* P. 158

Fifthly, That if Executors and Administrators being Plaintiffs in Prohibition are never liable to Costs upon a Judgment against them, then every Man had better give up his Right to Tithes due from them, than commence a Suit in the Court Christian, and expose himself to their Mercy, at the Hazard of being put to twice as much Charge as the Tithes may be worth, without being reimbursed any Part thereof,

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thereof, if a Prohibition should be applied for. *Mic. 13 G. II.*

For the Defendant it was insisted that the Stat. 8 & 9 W. 3. cap. 10. has an express Proviso in favour of Executors and Administrators; that this being a Demand for Tithes during the Life-Time of the Intestate, the Plaintiffs could not be sued but as Administrators, and tho' the Suit in Prohibition was commenced since the Death of the Intestate, yet it was merely to protect the Assets, as in Cases of Writs of Error brought by Executors or Administrators, they pay no Costs, and that when a Plaintiff in Prohibition is ordered to declare, he is excused from making Proof of his Suggestion, pursuant to the Stat. Ed. 6. the Proof being to be made at the Trial Per Pais.

Curia: The Defendant is intitled to no Costs in this Case.

Barnes *against* Ward. *Mich. 13*
Geo. II.

MOTION to set aside an Execution; the Case was, The Defendant being in Custody at the Plaintiff's Suit, executed a Warrant of Attorney to confess Judgment, having first sent for Mr. — an Attorney, or his

S. C. Notes

Pract. 38.

Warrant to confess a Judgment executed by a Prisoner must be in the Presence of an Attorney on his Behalf.

Cases of Practice in the

Mic. 13 G. II. his Clerk, to come and assist him; the Clerk actually attended, but he not being then a sworn Attorney, the Court held that the Execution of the Warrant of Attorney was irregular, the Presence of a sworn Attorney being necessary, pursuant to the Rules of the Court. It was thereupon prayed that the Rule might be enlarged, in Order to get an Affidavit, that the Plaintiff's Attorney was present; his Counsel apprehending * that that would be sufficient; the Rule was accordingly enlarged, but afterwards made absolute, and the Prothonotary directed to settle Satisfaction for such Effects as could not be restored in Specie.

* P. 159

Anonymous.

Defendant
may move to
change the
Venue after
Impar lance.

MOTION to change the Venue, and Rule Nisi. On shewing Cause it was insisted for the Plaintiff, that tho' the Rules for pleading were not out at the Time of the Defendant's Motion, yet as he had gained Time by Application to a Judge for an Imparlance from Trinity Term last, he ought not now to move to change the Venue; contra it was said that whether an Imparlance had been had or not, yet at any Time before Plea pleaded, tho' the Rules for pleading are out, the Defendant

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dant may move to change the Venue, *Mic. 13 G. II.*
unless he had applied for Time to plead,
and in that Case the Court would not
suffer him to make use of that Indul-
gence to the Plaintiff's Prejudice.

Curia: The Imparlance in this Case
was no more than the Defendant was
intituled to; the Rule must be made ab-
solute.

Robinson *against* Tuckwell.

A Motion to set aside an Execution Defendant on
executed after a Writ of Error Judgment af-
allowed, and a Rule Nisi. ter Error

The Case was, the Plaintiff having brought and
obtained a Verdict and Judgment Judgment
for Costs, the Defendant sued out a Writ thereon, Plain-
of Error; and pending that Writ, the tiff may take
the Plaintiff brought an Action of Debt out Execution.
on the Judgment, and after Judgment
thereon took out an Execution, and
got it executed without Leave of the
Court. And now on shewing Cause it
was insisted that the Plaintiff might
proceed as he has done, unless the De-
fendant had obtained a Rule for stay-
ing Proceedings upon his confessing
Judgment; which Rule he might have
had for asking; but having not done
so, the Plaintiff's Execution is regu-
lar, and ought not to be set aside; the
Case of * Humphrys and Daniel, East. * Ante 129,
9 Geo.

Cases of Practice in the

Mic. 13 G. II. 9 Geo. II. being a Determination in Point.

Curia: The Rule must be discharged.

* P. 160 * Palmer *against* Sir James Edwards.

Words not
Actionable,
Judgment ar-
rested after
Verdict.

IN an Action for Scandalous Words I spoke of a Justice of the Peace, viz. 1. You robbed the Poor, and are worse than a Highwayman. 2. You Villain you have robbed the Poor and are worse than a Highwayman. 3. You Villain you have robbed the Poor. 4. You are worse than a Highwayman. A general Verdict was given for the Plaintiff, and 5l. Damages; Motion in Arrest of Judgment, and Rule Nisi. On shewing Cause two Counsel were heard on each Side, and many Cases cited.

Curia: There is not much Difficulty in this Case, but there is no End of citing and answering Cases; to bear an Action, Words must have a certain Signification, must so reflect upon a Person, that if true he might be liable to some legal Punishment, or if from the speaking some particular Damage does accrew, or is likely so to do, and Costs or Damages, or upon a Colloquium of his Trade. The Plaintiff here is said to be a Justice, yet no special

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special Damage laid in this Case; the *Mich. 13 G. II.*
Office of Justice of the Peace not so
considerable but that many People
choose to decline it. Villain alone has
never been held to be actionable; indeed
in the Case of Scandalum Maghatum
the Rules are very different. Rob-
bing a Word of uncertain Significa-
tion, which Uncertainty is rendered
greater by the Words annexed, robbed
the Poor, what Poor and when? The
Words therefore Villain and robbed
the Poor not being actionable, and the
Verdict general, if one Set are bad,
the Judgment, must be arrested as to
the Whole. Worse than a Highway-
man is very uncertain, for a Papist
will say so of any Protestant, and it
has been said by some Protestants of
others, only in Regard to their Reli-
gious Differences; Judgment must be
arrested.

Cases of Practice in the

East. 20 G. II.

An Additional Case.

Easter Term 20 Geo. II. 1747.
Common Pleas.

Baskerville, Esq; Plaintiff }
And } In Error.
Chaffey, Defendant }

Bail in Error
justified by a
Marshal's
Court Officer,
and said not to
be within the
Rule of Court,
Mich. 6 G. II.
sec. 7.

PLAINTIFF gave Notice that Bail was put in, who were J— C— of Crown-Court, Fleet-street, Woolstapler, and D— S— of Blackhorse-Alley, Fleet-street, Cooper, who wou'd justify in Court on the Saturday following (which was May 30.) Serjeant Hayward opposed their Justification, for that they had but just before (viz. the same Morning) justified for 60l. in another Cause; and that by the Notice in his Hand, one called himself of Crown-Court, Woolstapler; and the other of Blackhorse-Alley, Cooper; Whereas it appeared by the Affidavit of the Defendant's Agent, that he went to Crown-Court, no such Person as C—, a Woolstapler lived there, but one C—, a Bailiff or Follower, lived in Hanging-Sword Alley, and that on searching at the Marshal's Court Office he found C—

Court of Common Pleas.

C—— to be an Officer of that Court: *East. 20 G. II.*
And he also inquired in Blackhorse Alley after S——, a Cooper; several of the Neighbours said they knew no such Person in that Alley, there was no Cooper there, unless the Man at such a House was a Cooper, who proved to be the Person, and referred to a Neighbour for a Character, who said he would not trust him Two-pence, he had no visible way of Living, except that his Wife took in Washing, and he sometimes went of Errands; and that from all the Circumstances of the Inquiry the Defendant's Agent believed that both of the Bail were common or hired Bail, and not sufficient Bail upon the Writ of Error in this Cause. The Court added the 60*l.* which they had justified for before, to 200*l.* for which they were Bail in this Cause; each of them swore he was worth the Money after his Debts paid, and that he had a Freehold Estate, one lay in Gloucestershire, and the other near Rygate in Surry, so that the only Objection remaining was, Whether C—— being a Marshal's Court Officer, was within a Rule of this Court made Mich. 6 Geo. II. whereby (for the Reasons therein mentioned) it is ordered that, no Sheriff's Officer, Bailiff, or other Person concerned in the Execution of Process, shall be Bail in any Action or Suit depending in this Court;

Cases of Practice, &c.

East. 20 G. II. Court: The Prothonotary was asked, If he ever knew an Instance where a Marshal's Court Officer was refused to be Bail; he said, No; but he knew no Reason why they should not as well as Sheriffs Officers: But the Court (the Chief Justice absent) admitted the Bail as not being within the before-mentioned Rule.

See a Case in *Pract. Reg. C. B.* p. 73. where hired Bail was committed to the *Fleet Prison*.

A TABLE

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2. When the Declaration is delivered so late in the Term, that

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2. If Interrogatories be not filed in four Days, the Defendant must move for his Discharge, or he will be still liable to answer. *ibid.*

3. Attachment against the High-Sheriff, the Rule being served on him. 87

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3. In an Action on a Recognizance against Bail the Plaintiff need not sue out a special Writ; a *Clausum fregit*, with an *Ac etiam* in Debt, is sufficient. 18

4. In such Action the Defendant should be arrested four Days at least before the Return of the Writ, that he may have Time to render the Principal. *ibid.*

5. On an Action upon the Recognizance against Bail, they have

till the Rising of the Court on the Appearance-Day of the Return of the Writ to render the Defendant.

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6. In an Action on the Recognizance against Bail, Error being brought in the original Action, Plaintiff allowed to proceed to Judgment, but Execution stayed till Error determined. 24

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29. A *Prochein amy* shall pay Costs for not proceeding to Trial. 32

30. Issue on a Plea in Abatement, and the Plaintiff nonsuited at the Assizes, the Defendant allowed Costs. 35

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Son Assault Demeſne,
Plene adminiſtravit,
Riens per Diſcent,
Ne unques Executor,

Nul tiel Record,

Per Minas,

Per Dures,

Infra Ætatem, &

Solvit ad Diem,

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